

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1968

No. 548

RODERICK JENKINS, *Appellant*,

v.

JOHN JULIEN McKEITHEN, ET AL., *Appellees*.

*ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT  
COURT FOR THE EASTERN DISTRICT OF LOUISIANA*

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## APPENDIX

[March 11, 1968]

### UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

Civil Action No. 68-38

RODERICK JENKINS

v.

JOHN JULIEN McKEITHEN, CECIL MORGAN, PAUL M. HEBERT,  
FLOYD C. BOSWELL, RALPH F. HOWE, A. R. JOHNSON, III,  
BURT S. TURNER

#### Original Complaint

##### I.

#### JURISDICTION

(a) The jurisdiction of this court is invoked under Title 42, United States Code, Sections 1981, 1983 and 1988, this being an action in which a citizen of the United States contends that he has been, is now, and threatens to continue to be denied of rights, privileges and immunities secured to him by the Constitution of the United States, and of the full and equal benefits and protection of pertinent laws of the State of Louisiana, and thus, is deprived of his legal rights as a citizen of the State of Louisiana and of the United States contrary to the Constitution and laws of the United States.

(b) The jurisdiction of this court is further invoked under Title 28, United States Code, Sections 1343(3) (4), this being an action for the redress of the deprivation, under

color of law, of rights, privileges and immunities secured to complainant as a citizen of the United States by the Constitution and laws of the United States.

## II.

### INJUNCTIVE RELIEF

The jurisdiction of this court is also invoked under Title 28, United States Code, Sections 2281 and 2284, this being an action for injunctive relief, both temporary and permanent, to enjoin and restrain the enforcement, operation and execution of statutes, and certain orders, rules, resolutions and regulations promulgated and issued by and which are to be promulgated and issued by an administrative agency, board and instrumentality of the State of Louisiana pursuant to or in purported reliance upon the statute complained of and set forth more fully hereinafter.

## III.

### DECLARATORY JUDGMENT

This is a proceeding pursuant to Title 28, United States Code, Sections 2201 and 2202, for a declaratory judgment to determine and define the legal rights and relations of plaintiff and those similarly situated in the subject matter of this controversy and for a final adjudication of all matters in actual controversy between the parties to this cause, to-wit: The questions:

(a) Whether the provisions of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967, otherwise known and cited as R.S. 23:880.1-880.18 (hereinafter sometimes referred to simply as "said Act"), deny to plaintiff and those similarly situated of their rights, privileges and immunities as citizens of the United States and of due process and equal protection of law secured to them by the Fourteenth Amendment to the United States Constitution and of rights and privileges secured to them

by Section 1981, 1983 and 1988 of Title 42, United States Code, and is for those reasons unconstitutional and void.

(b) Whether the acts and deeds of defendants or either of them, their agents, employees and representatives, while acting or purporting to act pursuant to or under color of state law and in conspiracy among themselves and with others, of: (inter alia) (1) intimidating, coercing and inducing, by promises, threats and actual giving of things of value, person to make and/or subscribe to knowingly false statements of criminal activities and knowingly using such fraudulent evidence as a basis to bring about indictments and pursue the criminal prosecution of plaintiff and those similarly situated, (2) intimidating, coercing and wrongfully inducing public officials to initiate and prosecute knowingly false criminal charges against plaintiff and those similarly situated, (3) knowingly, purposefully and willfully intimidating state court judges at a time when said officials have under consideration the judicial determination of legal controversies involving the rights, privileges and immunities of plaintiff and those similarly situated, and (4) knowingly, purposefully and willfully seeking the destruction of the labor union and its leadership to which plaintiff and those similarly situated belong as accredited members thereof and upon which plaintiff and those similarly situated rely for the acquisition and maintenance of fair wages and decent working conditions as laborers, deny to plaintiff and those similarly situated of rights, privileges and immunities secured to them by the Constitution and laws of the United States of America.

#### IV.

##### FACTS

(1) Plaintiff alleges that he is an adult citizen of the United States and of the State of Louisiana, and that at all times material hereto was a resident of East Baton Rouge Parish, Louisiana, functioning as a laborer and a

member of the labor union known as Teamsters Local No. 5 of Baton Rouge, Louisiana.

(2) At all times material hereto John Julien McKeithen, an adult male residing in East Baton Rouge Parish, Louisiana, was acting under color of law functioning as Governor of the State of Louisiana and as such as director of the administrative agency created by the state law complained of and known as the Labor-Management Commission of Inquiry.

(3) At all times material hereto Cecil Morgan, an adult male residing in New Orleans, Louisiana; Paul M. Hebert, an adult male residing in East Baton Rouge Parish, Louisiana; Floyd C. Boswell, an adult male residing in Shreveport, Louisiana; Ralph F. Howe, an adult male residing in Baton Rouge, Louisiana; A. R. Johnson, III, an adult male residing in Lake Charles, Louisiana; and Burt S. Turner, an adult male residing in Baton Rouge, Louisiana, were acting under color of state law functioning as members of the Labor-Management Commission of Inquiry, a body politic of the State of Louisiana, having been appointed thereto by defendant John Julien McKeithen.

(4) Plaintiff alleges that the state statute complained of creates as aforesaid a Commission of Inquiry; this Commission of Inquiry however is nothing but an executive trial agency, invested with broad police powers, including the power of subpoena, contempt citation for disobedience of its orders and the taking of evidence anywhere in and out of the State of Louisiana. The great arsenal of power possessed by this Commission is concentrated in a narrow functional chamber aimed at conducting public trials concerning criminal law violations; by virtue of the provisions of Section 880.6(b) it is prohibited from engaging in legitimate fact finding investigation leading to the discovery of relevant evidence in connection with labor-management relations, upon which to base any recommendation for remedial legislation.

(5) Plaintiff further alleges that said Commission of Inquiry is an executive trial agency which receive evidence to ascertain the existence of "facts surrounding or pertaining to \*\*\* any actual or probable *violations* of the criminal laws of this state (Louisiana) or of the United States which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations". Section 880.6(a). Further plaintiff alleges that after conducting its said investigations and hearings, it is the mandatory duty of the Commission to make findings of fact limited to two objectives: (a) violations of any criminal law or laws of the State of Louisiana and of the United States, and (b) the guilt or innocence of specific individuals as to such alleged criminal law violations. Section 880.7(a). Not only is it the mandatory duty of the Commission to make such "findings", but the Commission must "publicize" these "findings". Additionally no such "findings" can be made and "publicized" unless it is preceded by a "public hearing". Section 880.7(a). Thus the legislative intent to "publicly" condemn is unmistakable clear. After the Commission has made public "findings" that certain citizens are criminals it then becomes its mandatory duty to "report its findings and recommendations to the proper federal and state authorities, or either of them, charged with the responsibility for prosecution of criminal offenses", in addition to which, when directed to do so by the Commission, the *chairman* of the Commission "shall file appropriate charges with the state and federal authorities having jurisdiction". Section 880.7(b).

(6) Plaintiff alleges that in essence the function of the Commission is accusatory in nature whose duty it is to name individuals who are guilty of criminal law violations by formal "findings" of guilt arrived at only after a "public hearing" as to such guilt and thereafter to "publicize" such guilty verdict and thereafter to report its "findings" to state or federal authorities charged with the responsi-

bility of instituting criminal prosecution or for its chairman to so institute criminal prosecution of such individuals as part of the process of criminal prosecution.

(7) Plaintiff alleges that despite the fact that said Commission of Inquiry exercises (a) an accusatory function, (b) its duty to find that named individuals are responsible for criminal law violations, (c) it must advertise such findings, and (d) its findings serve as part of the process of criminal prosecution, there is denied to a person compelled to appear before said Commission (1) the right to the effective assistance of counsel, (2) the right of confrontation, (3) the right to compulsory process for the attendance of witnesses on behalf of such an accused person, and (4) there are no effective and meaningful rules of evidence regulating the admissibility of evidence, (5) no meaningful and definable standards of guilt or innocence, (6) no right of appeal, and no right effectively to invoke the Fifth Amendment immunity against self-incrimination, inasmuch as said Commission has power to compel one to publicly confess his guilt of criminal law violation by simply purporting to extend to him immunity from both state and *federal* criminal prosecution. Section 880.13.

(8) Furthermore complainant alleges that said defendants, their agents, representatives and employees, and those acting in concert with them, in connection with the administration of the provisions of said Act, have singled out complainant and members of Teamsters Local No. 5 as a special class of persons for repressive and willfully punitive action, solely because they are members of said Teamsters Local No. 5, in furtherance of which a deliberate effort has been made and continues to be made by said officials, spearheaded by defendant McKeithen, while acting under color of state law, to destroy the current power structure of the labor union aforesaid and said union to which complainant belongs as a member and through which he experiences economic survival, and to install a new power structure

oriented and subservient to the James R. Hoffa group or clique of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; this effort has included and continues to include (a) the deliberate circulation for public consumption of willful falsehoods about members of said labor union, such as characterizing said members as "hoodlums" and "gangsters", comparable in depravity to the sinister Mafia gangsters of underworld criminals, while masking such lawless conduct behind a verbal facade of law and order, (b) the indiscriminate filing of criminal charges against members of said labor union, where there exists no justifiable basis therefor and the concomitant exaction of excessive bail bonds, (c) the intimidating of public officials into carrying out the tyrannical aims of such indiscriminate criminal prosecution, and (d) the dictatorial use of the powers of the office of Governor of Louisiana in furtherance thereof.

(9) Furthermore complainant alleges, as more specifically applies to him, that, in furtherance of said conspiracy, on February 15, 1968 on Sam Cashio, while acting in concert with defendants herein, and acting under color of law while functioning as District Attorney, filed in the Eighteenth Judicial District Court, Parish of Iberville, Louisiana, a bill of information against complainant, assigned as docket number 9840 of said state court, whereby complainant is charged with a criminal conspiracy to commit a battery with a dangerous weapon on one W. O. Bergeron; a bill of information, assigned as docket number 9841 of said state court, whereby complainant is charged with a criminal conspiracy to commit a battery with a dangerous weapon on one Warren Shores; a bill of information, assigned as docket number 9842, of said state court, whereby complainant is charged with a criminal conspiracy to commit a battery with a dangerous weapon on one Alfred Bergeron; a bill of information, assigned as docket number 9843 of said state court, whereby complainant is charged

with a criminal conspiracy to commit a battery with a dangerous weapon on one Cornelius Green.

(10) Complainant alleges that there is no factual or legal basis whatever for the filing of said criminal charges against your complainant; complainant alleges that said criminal charges were filed against him to inflict summary punishment upon your complainant solely because he is a member of the Teamsters Local Union No. 5; furthermore complainant alleges that defendants and the said Sam Cashio and other state officials know that there exists no factual or legal basis for the criminal prosecution of your complainant as thus exemplified and that said defendants have no reason to believe that complainant committed the said criminal activities charged against him and that said defendants knew or had good reason to know by the exercise of due diligence that at all times material to said criminal charges your complainant was at the site of his employment at Baton Rouge, Louisiana, where he functioned and had been functioning as an employee of Kaiser Engineers, a division of Henry J. Kaiser Company at Baton Rouge, Louisiana.

(11) Complainant further alleges that on February 20, 1968, acting through counsel, he filed a petition for a preliminary examination or alternatively for a speedy trial as to said criminal charges alleging that said criminal charges were scandalously and willfully false and without factual support whatsoever; complainant alleges that he sought to have an expeditious determination of the falsity of said charges by way of a preliminary examination in order to avoid the unnecessary expenditure of a considerable sum of money for the engagement of counsel and also to avoid the ignominy of a public trial concerning criminal charges that were patently false and without foundation whatever.

(12) Complainant alleges that his said application was presented to G. Ross Kearney, Jr., a duly elected and consti-

tuted judge of the Eighteenth Judicial District Court of the State of Louisiana aforesaid: said state judge however took no action whatever on complainant's said application, in consequence of which complainant filed an application for a writ of mandamus and prohibition with the Supreme Court of the State of Louisiana seeking an order from said court to compel said state district court judge to take action on complainant's said application and to grant such a preliminary examination or a speedy trial.

(13) Complainant alleges that his application for mandamus was filed with the Office of the Clerk of the Louisiana State Supreme Court on February 29, 1968, and was assigned docket number 49,125, and on the same date, namely February 29, 1968, said application was denied, no reason being given except the following: "The application is denied. The showing made does not warrant the exercise of our supervisory jurisdiction."

(14) Complainant alleges that after said denial as aforesaid said state district Judge G. Ross Kearney, Jr. on March 1, 1968 finally took action on complainant's application for a preliminary examination and alternatively for a speedy hearing; said state district judge denied complainant's application for a preliminary examination observing that since complainant "is now out on bail a preliminary hearing would serve no useful purpose", thus ignoring the fact that the prosecution of complainant on the basis of such false accusation will of necessity engage him in the expenditure of a considerable amount of money and subject him to the ignominy of a public trial; further said district court judge observed that the regular criminal term of court for the said state court was due to commence on April 15, 1968 at which time trial of jury cases would begin.

(15) Complainant further alleges that defendants, their agents, employees and representatives, while acting under state law, in concert and conspiracy among themselves and with others, by acts of threats, intimidation, promises and

bribery have knowingly obtained false statements from persons so induced and have knowingly used such fraudulent evidence as a means of bringing about the indictment and criminal prosecution of other members of Teamsters Local No. 5; that said defendants furthermore have engaged in the intimidation of state officials, including state court judges as a means of depriving complainant and members of the Teamsters Local No. 5 of constitutional due process and equal protection of state laws.

(16) Complainant alleges that said defendants intend to continue to deprive your complainant and those similarly situated of their rights, privileges and immunities secured to them by the Constitution and laws of the United States only because plaintiff and other members of Teamsters Local No. 5 are members of said labor union; further complainant alleges that he and members of said labor union are now and threaten to continue to be greatly harmed, damaged, imprisoned and injured by the illegal, wrongful and knowing and purposeful acts of said defendants and each of them, and they have no plain, adequate or efficient remedy at law to redress the wrongful, knowing and purposeful acts of said defendants other than this action for declaratory judgment and injunctive relief; that any other remedy to which they could be remitted would be attended by uncertainties, would involve a multiplicity of suits and would cause complainant irreparable harm and injury and occasion undue hardship, vexation and delay.

(17) Complainant further alleges that unless this Honorable Court do issue a temporary restraining order immediately and without a hearing, enjoining, restraining and prohibiting said defendants, their agents, servants, employees and/or successors in office and those acting in concert with them, from denying or depriving complainant and those similarly situated of their rights, privileges and immunities as citizens of the United States and of the State of Louisiana on the basis that they are members of Teamsters Local No. 5 or from making any other distinction as

to them because they are members of said labor union and from enforcing or executing the provisions of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967 and from instituting or maintaining any actions at law, civil or criminal, now pending in any of the courts of the State of Louisiana or intended hereafter to be instituted by them or those acting in concert with them, complainant and those similarly situated will suffer immediate and irreparable injury, harm, damage, imprisonment, forfeitures and fines; that, furthermore, said temporary restraining order is necessary in the interest of justice for the purpose of maintaining the status quo relative to the operation, enforcement and execution of the state statute complained of herein, until such time as this Honorable Court may determine the issues presented hereby, after full hearing and opportunity afforded plaintiff to furnish extrinsic proof of the substantial averments of the complaint.

(18) Complainant annexes hereto:

1. A copy of the state statute complained of herein, marked as Exhibit "A".
2. Copies of criminal charges herein aforesaid, marked Exhibits "B", "C", "D" and "E".
3. Copy of Application for Preliminary Examination or Speedy Hearing filed in the Eighteenth Judicial District Court, Iberville Parish, Louisiana, marked Exhibit "F".
4. Copy of Application for Writ of Mandamus and Prohibition filed in the Louisiana State Supreme Court, marked Exhibit "G".
5. Copy of denial of said application by the Louisiana State Supreme Court, marked Exhibit "H".
6. Copy of denial by State District Court Judge of Application for Preliminary Examination and Speedy Hearing, marked Exhibit "I".

WHEREFORE COMPLAINANT RESPECTFULLY PRAYS that upon the filing of this complaint, as may appear fitting and proper to the court:

(1) That a statutory three judge district court be convened pursuant to Sections 2281 and 2284 of Title 28, United States Code;

(2) That a temporary restraining order to issue immediately and without a hearing enjoining, restraining and prohibiting said defendants, their agents, servants, employees and/or successors in office and those acting in concert with them, from denying or depriving complainant and those similarly situated of their rights, privileges and immunities as citizens of the United States and of the State of Louisiana on the basis that they are members of Teamsters Local No. 5 or from making any other distinction as to them because they are members of said labor union and from enforcing or executing the provisions of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967 and from instituting or maintaining any action at law, civil or criminal, now pending in any of the courts of the State of Louisiana or intended thereafter to be instituted by them or those acting in concert with them;

(3) That this cause be advanced on the docket of this court and set for a speedy hearing according to law and upon such preliminary hearing that a preliminary injunction in the nature and substance of the temporary restraining order herein prayed for do issue, enjoining, restraining and prohibiting said defendants, their agents, servants, employees and successors in office to the extent in the nature and form of said temporary restraining order herein prayed for.

(4) That upon final hearing of this cause on its merits, this Honorable Court will:

(a) Enter a final judgment and decree that will declare and define the legal rights and relations of the parties in the subject matter in controversy.

(b) Enter a final judgment, order and decree that will declare that Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967, and all resolutions, rules and regulations of the Labor-Management Commission of Inquiry adopted pursuant thereto that require, permit or sanction the enforcement of said statute and rules and regulations against complainant and those similarly situated, is unconstitutional, null and void as a matter of law or because of the intentional knowing and purposeful acts, deeds and conduct of said defendants in the administration of the provisions thereof.

(c) Enter a permanent injunction that will enjoin and restrain said defendants, their agents, servants, representatives and employees and their successors in office and all persons acting in concert with them forever from executing or enforcing against plaintiff and those similarly situated any of the provisions of said state law or any rule or regulation or resolution or any other order or orders made or issued pursuant thereto that require, permit or encourage the denial to plaintiff or those similarly situated or any of them of their rights, privileges and immunities as secured to them by the United States Constitution and that will further enjoin said defendants, their agents, employees, servants or successors in office to hold in status quo all actions at law, whether civil or criminal now pending in the courts of the State of Louisiana and that will further enjoin said parties from taking any further or other actions, civil or criminal, in any court in pursuant of said statute, rules, regulations, resolutions or orders adopted pursuant thereto for in pursuance to any judgment, order or decree heretofore obtained or to hereafter obtained in purported reliance on the statute complained of or the rules, regulations or resolutions adopted pursuant thereto, and that they, said defendants, and those acting in concert with them, shall cease and desist from discriminating in any way against plaintiff and those similarly situated solely because

of their classification as members of Teamsters Local Union No. 5 of Baton Rouge, Louisiana.

(d) That this Honorable Court allow plaintiff his costs incurred herein and grant such other and further relief as may appear just and proper.

J. MINOS SIMON  
1408 Pinhook Road  
Post Office Box 52116, OCS  
Lafayette, Louisiana

/s/ J. MINOS SIMON  
*Attorney for Complainant*

STATE OF LOUISIANA  
PARISH OF LAFAYETTE

J. MINOS SIMON, being first duly sworn, did depose and say that he is of counsel in the foregoing complaint, that he has prepared and read the same and that all of the allegations of fact therein contained are true and correct to the best of his knowledge, information and belief.

/s/ J. MINOS SIMON  
J. Minos Simon

SWORN TO AND SUBSCRIBED before me on this 7th day of March, 1968, at Lafayette, Louisiana.

RONALD E. DAUTIEU  
*Notary Public*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

Minute Entry: March 13, 1968

WEST, J.

After due consideration of plaintiff's application contained in his complaint for the issuance of a temporary restraining order:

IT IS ORDERED that plaintiff's motion for the issuance of a temporary restraining order be, and it is hereby DENIED.

E. GORDON WEST

*United States District Judge*

[Filed March 19, 1968]

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA

Civil Actions No. 68-38 and 68-42

Order re Three-Judge Court

(1) Requesting Judge: E. GORDON WEST, Eastern District of Louisiana.

(2) District Judge: LANSING L. MITCHELL, Eastern District of Louisiana.

(3) Circuit Judge: JOHN MINOR WISDOM.

(4) Date of Order: March 19, 1968.

The Requesting Judge (1) above named to whom an application for relief has been presented in the above cause having notified me that the action is one required by Act of Congress to be heard and determined by a District Court

of three Judges, I, John R. Brown, Chief Judge of the Fifth Circuit, hereby designate the Circuit Judge (3) and District Judge (2) named above to serve with the Requesting Judge (1) as members of, and with him to constitute the said Court to hear and determine the action.

This designation and composition of the three-judge court is not a prejudgment, express or implied, as to whether this is properly a case for a three-judge rather than a one-judge court. This is a matter best determined by the three-judge court as this enables a simultaneous appeal to the Court of Appeals and to the Supreme Court without the delay, awkwardness, and administrative insufficiency of a proceeding by way of mandamus from either the Court of Appeals, the Supreme Court, or both, directed against the Chief Judge of the Circuit, the presiding District Judge, or both. The parties will be afforded the opportunity to brief and argue all such questions before the three-judge panel either preliminarily or on the trial of the merits, or otherwise, as that Court thinks appropriate.

/s/ JOHN R. BROWN  
John R. Brown  
*Chief Judge*  
*Fifth Circuit*

[Filed March 25, 1968]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

**Order and Notice of Hearing**

A three judge District Court having been convened in these cases, composed of Circuit Judge John Minor Wisdom, District Judge E. Gordon West, and District Judge Lansing L. Mitchell, and it appearing that these two cases involve substantially the same question of law:

IT IS THEREFORE ORDERED that the above two captioned cases be, and they are hereby consolidated for hearing on their merits.

IT IS FURTHER ORDERED that, in compliance with the provisions of Title 28, United States Code, Section 2284, notice is hereby given to the Attorney General of the State of Louisiana, that the question of the constitutionality of Act No. 2 of the Extra Session of the Louisiana Legislature for 1967, and all other matters contained in these suits determined to be properly before said Court, be, and they are hereby set for hearing before said Court in New Orleans, Louisiana, at 10:00 o'clock a.m. on Wednesday, May 1, 1968.

IT IS FURTHER ORDERED that, in compliance with the provisions of Title 28, United States Code, Section 2284, copies of this notice be mailed, by registered mail or by certified mail, by the Clerk of this Court, to all parties entitled to notice hereof, said notice to be complete by the mailing thereof.

Baton Rouge, Louisiana, March 25, 1968.

/s/ E. GORDON WEST  
United States  
District Judge

[Filed April 8, 1968]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

**Answer**

Defendants for answer to the complaint, at this time, under full reservation of their previously filed Motion to Dismiss, and without in any manner waiving the same, or the right to request the Court to first dispose of the same before entering upon the trial of the merits hereof, all under the instructions of this Court that this cause, on motions and merits, will be heard on May 1, 1968, the date assigned therefor, alleges:

**FIRST DEFENSE**

There is a lack of jurisdiction of this Court over the subject matter of the complaint, all as pleaded in said Motion to Dismiss and the Memorandum filed in support thereof.

**SECOND DEFENSE**

The complaint fails to state a claim upon which relief can be granted inasmuch as the statute attacked is constitutional, all as pleaded in said Motion to Dismiss and Memorandum filed in support thereof.

**THIRD DEFENSE**

The complaint fails to state a claim under which a court of equity should enjoin a criminal prosecution in a state court, all as pleaded in said Motion and Memorandum filed in support thereof.

**FOURTH DEFENSE**

1.

Defendants deny the allegations contained in paragraphs I, II and III of the complaint; and defendants admit the following subparagraphs of paragraph IV of the complaint, viz: 3 and 18; and defendants allege that they are

without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the following subparagraphs of paragraph IV of the complaint, viz: 1, 11, 12, 13 and 14; and defendants deny the following subparagraphs of paragraph IV of the complaint, viz: 8, 9, 10, 15, 16 and 17.

2.

For answer to subparagraph 2 of said paragraph IV of the complaint, respondents admit that John Julien McKeithen is governor of the State of Louisiana, residing in the Parish of East Baton Rouge, but defendants deny the remaining allegations thereof.

3.

Defendants deny the allegations of subparagraphs 4, 5, 6 and 7 of paragraph IV of the complaint and aver that the statute is the best evidence of its provisions.

WHEREFORE defendants pray that plaintiff's suit be dismissed at his cost.

By ATTORNEYS,

**JACK P. F. GREMILLION**

*Attorney General of Louisiana*

**ASHTON L. STEWART**

*Special Assistant Attorney  
General of Louisiana*

**VICTOR A. SACHSE**

*Special Assistant Attorney  
General of Louisiana*

By **ASHTON L. STEWART**,

*Ashton L. Stewart,*

*Trial Attorney*

604 Union Federal Building  
Baton Rouge, Louisiana 70801  
Telephone No. 342-4796

*Attorneys for Defendants*

[Certificate of Service omitted]

[Filed April 8, 1968]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

**Defendants' Motion To Dismiss**

The defendants, JOHN JULIEN McKEITHEN, CECIL MORGAN, PAUL M. HEBERT, FLOYD C. BOSWELL, RALPH F. HOWE, A. R. JOHNSON, III, and BERT S. TURNER, move to dismiss the complaint filed by the plaintiff for the following reasons, viz:

I.

Lack of standing of plaintiff to question constitutionality of statute.

II.

Failure to state a claim upon which relief can be granted as the Statute attacked is constitutional.

III.

Failure to state a claim under which a court of equity should enjoin a criminal prosecution in a state court.

WHEREFORE, the defendants ask that the complaint be dismissed.

BY ATTORNEYS,

JACK P. F. GREMILLION

*Attorney General of Louisiana*

ASHTON L. STEWART

*Special Assistant Attorney  
General of Louisiana*

VICTOR A. SACHSE

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604 Union Federal Building

Baton Rouge, Louisiana 70801

Telephone No. 342-4796

*Attorneys for Defendants*

[Certificate of Service omitted]

[Filed April 8, 1968]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

## Notice of Motion

To:

J. Minos Simon, Esq.  
Simon Building  
1408 Pinhook Road  
Lafayette, Louisiana 70501  
Attor~~ey~~ for Plaintiff,  
Roderick Jenkins

Please take notice that the undersigned counsel for defendants will bring the motion to dismiss, filed this day in the captioned, on for a hearing before the Court in New Orleans, Louisiana, at 10:00 o'clock A.M. on the 1 day of May, 1968, or as soon thereafterwards as counsel can be heard.

Baton Rouge, Louisiana, April 8, 1968.

By ATTORNEYS,

JACK P. F. GREMILLION  
*Attorney General of Louisiana*

ASHTON L. STEWART  
*Special Assistant Attorney  
General of Louisiana*

VICTOR A. SACHSE  
*Special Assistant Attorney  
General of Louisiana*

By ASHTON L. STEWART,  
Ashton L. Stewart,  
*Trial Attorney*  
604 Union Federal Building  
Baton Rouge, Louisiana 70801  
Telephone No. 342-4796

*Attorneys for Defendants*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

Number 68-38

Civil Action Number 68-42

Minute Entry: April 25, 1968

WEST, J.

IT IS ORDERED that the hearing set in this matter before a Three Judge Court in New Orleans, Louisiana, on May 1, 1968, be, and it is hereby CONTINUED, SUBJECT TO RE-ASSIGNMENT, and

IT IS FURTHER ORDERED that all subpoenas issued in this case for said hearing on May 1, 1968, be, and they are hereby RECALLED, RESCINDED AND CANCELLED.

IT IS FURTHER ORDERED that the Clerk immediately serve, by mail, a copy of this order on all counsel of record, and that counsel of record, immediately upon being notified, either verbally or by receipt of this order, notify all witnesses of the cancellation of subpoenas previously issued herein.

E. GORDON WEST  
*United States District Judge*

[Filed May 3, 1968]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

Supplemental and Amending Petition

For a supplemental petition complainant respectfully gives the court to understand the following:

1.

Since the filing of the original complaint herein defendants and their employees, agents and representatives have continued to pursue the willful course of conduct designed to deprive complainants and those belonging to Teamsters Local Number 5 of their rights, privileges and immunities secured to them by the Constitution and laws of the United States; said defendants have frantically intensified their efforts in fulfillment of the conspiracy aforesaid to the point where the very lives of complainant and those belonging to Teamsters Local Number 5 of Baton Rouge, Louisiana are in imminent peril.

2.

Complainant is informed, believes and therefore states that six members of Teamsters Local Number 5 of Baton Rouge, Louisiana, have been singled out for murder by officials of the Labor-Management Commission of Inquiry of Louisiana; complainant alleges that officials of the Labor-Management Commission of Inquiry have advised certain employees of said State Commission that J. D. Arnold, Wade McClanahan, Terry George, Jerry Sylvester, Hugh Marionneaux and Lloyd Kitchen, all members of Teamsters Local Number 5 of Baton Rouge, Louisiana, could be shot and killed on sight at the slightest provoca-

tion and any employee killing any one of these union members would be granted complete immunity by the Governor of the State of Louisiana.

## 3.

Complainant believes that defendants, their agents, employees and representatives, while acting under color of law, are deliberately going about attempting to provoke members of Teamsters Local Number 5 of Baton Rouge, Louisiana, including your complainant, in an effort to create colorable justification for the intentional killing of said members in fulfillment of their conspiracy to destroy the current leadership of Teamsters Local Number 5 and discredit the membership thereof in an effort to replace that leadership with officials friendly to the James R. Hoffa group of the International Teamsters Union or alternatively thereby to induce Edward Grady Partin to recant in whole or in part the testimony he gave against the said James R. Hoffa in connection with the prosecution of the said Hoffa by the United States Government.

## 4.

More particularly complainant is informed, believes and therefore states that on April 29, 1968 at approximately 3:45 P.M., in furtherance of the conspiracy aforesaid, a state trooper whose name complainant is informed is Hamilton, accompanied by one whose name complainant is informed is Maronneaux, then allegedly functioning as Assistant Attorney General of Louisiana, and one whose name complainant is informed is Pete Brandon, an alleged investigator for the Labor Management Commission of Inquiry of Louisiana, appeared at the residence of Wade McClanahan, one of the six members of Teamsters Local Number 5 of Baton Rouge, Louisiana, singled out for murder as aforesaid, and upon arrival quickly jumped out of their automobile massively armed, the said Hamilton carrying a sawed-off 12 gauge shotgun and the said Marion-

neaux and Brandon brandishing each a firearm, including a 30-30 high powered rifle and said agents of defendants herein knocked at the front door of McClanahan's residence in response to which McClanahan's wife appeared; when informed that said agents had a warrant for McClanahan's arrest, Mrs. McClanahan responded that Mr. McClanahan was not in to which agent Brandon responded in substance, "Lady, I know that he's in there and if you are going to stand there in the door and lie to me we are going to put you under arrest and take you to jail too". Agent Brandon further stated that according to an alleged written statement by McClanahan's physician, McClanahan was supposed to be in bed and if he wasn't he, the said agent Brandon, could put both McClanahan and his physician in jail; said agents further told McClanahan's wife to get out of the doorway as they were going in; when she responded that they could not make a search of her house without a warrant, said agents responded that they did not need a search warrant to search the house; Mrs. McClanahan advised said agents that they would have to break down the door because she would not voluntarily permit them into the house.

## 5.

Complaint is further informed that said agents went in hiding in the residence of the next door neighbor to await McClanahan's arrival. McClanahan arrived at his residence at approximately 4:10 P.M.; upon arrival said agents converged upon him in an excited and hostile manner as though said McClanahan were a notorious criminal; agent Hamilton pointed the sawed-off shotgun at McClanahan's head, the muzzle of which came to rest against the left back quadrant of his said head, while the two other agents stood by with their 30-30 high powered rifles at the ready; he was ordered out of his car, made to face his automobile with his hands stretched out against the vehicle while they searched him and then his hands were cuffed

behind him and he was told that he was being arrested for having a machine gun; said agents refused to permit said McClanahan to read the warrant of arrest and as Mrs. McClanahan approached the arresting officers for the purpose of reading said arrest warrant agent Brandon forcefully pushed her against a nearby tree and agent Hamilton quickly turned about and pointed his loaded sawed-off shotgun at her.

## 6.

Complainant is further informed, believes and therefore states that at the time of the occurrence of the foregoing all of McClanahan's four minor children, ranging in age from one to ten years, were present; because of the brutal handling of McClanahan and his wife by said agents, all done in the apparent effort to provoke McClanahan into protecting his wife so as to have a colorable justification to kill said McClanahan, McClanahan's four year old son, Richard Wade, came running up to the car while exclaiming "Daddy, daddy, daddy", whereupon agent Marneaux whirled about and pointed his 30-30 caliber rifle at the head of McClanahan's little son and ordered him to get back.

## 7.

Complainant is informed, believes and therefore states that despite the peaceful surrender of McClanahan under the distressful situation aforesaid, said agents radioed for reinforcement; said agents furthermore forcefully carried McClanahan to the Denham Springs jail where he was charged with possession of a machine gun though, according to complainant's information, said McClanahan owns no such firearm; furthermore said agents obtained a search warrant to search McClanahan's house; in the meantime, however, in response to the aforesaid radio call eight or ten additional police officers converged on McClanahan's house and guarded it until the aforesaid agents could return to search said house allegedly for the discovery of a

machine gun and a 12 gauge shotgun; said agents returned, searched McClanahan's house even to the point of opening envelopes bearing personal communication in their effort to discover said objects and found nothing and contrary to the provisions of the warrant aforesaid confiscated a box of 12 gauge shotgun shells.

## 8.

Complainant is informed that simultaneously therewith similar searches were made of the offices of Teamsters Local Number 5 located at 1675 Airways Drive, Baton Rouge, Louisiana, of the residence of Jerry Sylvester, one of the members of Teamsters Local Number 5 marked for murder as aforesaid and of the residence of one Calvin Fontenot; complainant states that according to the information such raids by the use of massive police force ostensibly are designed to attempt to collect evidence in support of criminal charges filed against complainants and other members of Teamsters Local Union Number 5 of Baton Rouge, Louisiana, because said charges as stated in the original complaint, were knowingly filed without legal or factual basis; additionally, however, said conduct is an act in furtherance of this conspiracy to deprive complainant and members of Teamsters Local Number 5 of their rights, privileges and immunities secured by the United States Constitution.

## 9.

Complainant is further informed, believes and therefore states that in the latter part of March, 1968, defendants, acting by and through employees, agents and representatives of the Labor Management Commission of Inquiry engaged the services of one Billy D. Miller to attempt to bribe Wade McClanahan to give a false statement incriminatory of Edward Grady Partin; this effort culminated in Grapevine, Texas on April 2, 1968 where and when the said Billy D. Miller offered on behalf of the officers of the Labor Management Commission of Inquiry to pay the sum

of One Hundred Thousand (\$100,000.00) Dollars to the said Wade McClanahan in exchange for a statement that would be prepared by agents and representatives of said state agency that would be incriminatory of the said Edward Grady Partin; complainant is informed, believes and therefore states that the said Wade McClanahan pretended complicity with the said Miller to test the authenticity of said bribery offer whereupon, according to your complainant's information, said Miller was in communication by telephone with Joseph Oster, an investigator for the Labor Management Commission of Inquiry, and Thomas McFerrin, Assistant Attorney General functioning as counsel for said state agency; upon being advised by said Miller of McClanahan's willingness to accept the offered bribery said McFerrin and Oster boarded an airplane for Grapevine, Texas and arrived in Dallas, Texas which is adjacent to Grapevine, Texas, in furtherance of said conspiracy of bribery; complainant avers, however, that before their arrival McClanahan contacted the office of the sheriff of Dallas County to advise him of the attempted bribery as a consequence of which said Miller, Oster and McFerrin aborted the bribery attempt.

## 10.

Complainant further states that since the filing of his original complaint the defendants, acting through the Louisiana State Police and through other agents, have embarked on a course of harassment directed against complainant and his employer, in furtherance of the conspiracy mentioned in his original complaint; said defendants through said agents have appeared at the office of complainant's employer, Kaiser Aluminum Company, demanding to see complainant's employment records and though told that complainant was at his job site at all times during the alleged occurrence of the criminal activities for which he has been charged as set out in his original complaint, and despite the further fact that his employment records con-

firmed that fact, said agents have repeatedly appeared at said employment site, have attempted to make guards state or acknowledge that they didn't know complainant well enough to recognize him and therefore could not state that he was at his job site at the time of the alleged criminal activities and have similarly gone about questioning co-employees of your complainant, all for the willful purpose of attempting to compromise complainant's legal rights in an effort to bring about his criminal conviction and imprisonment, though said defendants know that there exists no factual or legal basis for his prosecution.

## 11.

Complainant moreover has been informed, believes and therefore states that investigators for the Labor Management Commission of Inquiry have stated that for each witness that complainant would bring to the bar of justice to testify that he was in fact not at the site of the criminal activities mentioned but on the job site at Baton Rouge, Louisiana, said Commission of Inquiry would bring a witness to say that in fact complainant was at the site of the criminal activities, and one more for good measure; furthermore complainant alleges that local officials are being intimidated into carrying out the evil intention of defendants herein and of condoning flagrant violation of the laws of the State of Louisiana and of the legal rights of complainant and those similarly situated, in that defendant McKeithen has said repeatedly that he would ask the Legislature of the State of Louisiana to address out of office any local official who fails to carry out charges developed by employees, agents and representatives of the Labor Management Commission of Inquiry, and has done so.

## 12.

In furtherance of said conspiracy said defendants through their agents, employees and representatives have now caused Edward Grady Partin to be arrested and

charged with the criminal offense of aggravated assault allegedly occurring some twenty months prior; complainant is informed, believes and therefore avers that the intensification of defendants' efforts, while acting under color of law, is but a response to the announcement of the candidacy of Honorable Robert F. Kennedy for the nomination for the Presidency of the United States by the Democratic party of the United States, in that the conspirators herein are hoping thereby to induce Edward Grady Partin to recant his testimony heretofore given against James R. Hoffa, to be used as a basis to obtain a new trial for and the consequent release from prison of James R. Hoffa prior to the Democratic presidential nomination, so as thereby to thwart the nomination of the said Robert F. Kennedy, who as Attorney General of the United States, ordered and managed the prosecution and conviction of the said James R. Hoffa.

## 13.

Complainant alleges that the acts of defendants herein, their agents, employees and representatives are facilitated and in large measure made possible by virtue of the provisions of the State Statute, Act No. 2 of the First Extraordinary Session of the Louisiana Legislature of 1967 and of the exercise of the authority of the officials in their capacities with the State of Louisiana.

WHEREFORE, COMPLAINANT PRAYS leave of court to file the foregoing supplemental and amending complaint and that in due course there be judgment as prayed for in his original complaint.

COMPLAINANT FURTHER PRAYS and respectfully moves for the issuance immediately and without a hearing of a temporary restraining order restraining and prohibiting said defendants, their agents, servants, employees and/or successors in office and those acting in concert with them from denying or depriving complainant and those similarly situ-

ated of their rights, privileges and immunities as citizens of the United States and of the State of Louisiana on the basis that they are members of Teamsters Local Number 5 and/or from making any other distinction as to them because they are members of said local union and from enforcing or executing the provisions of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature of 1967 and from maintaining or instituting any action at law, civil or criminal, now pending in any of the courts of the State of Louisiana or intended hereafter to be instituted by them or those acting in concert with them.

J. Minos Simon  
*Attorney at Law*  
1408 Pinhook Road  
Post Office Box 52116 OCS  
Lafayette, Louisiana

/s/ J. MINOS SIMON

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**Orders**

Considering the foregoing prayer and motion:

IT IS ORDERED, that Roderick Jenkins be and he hereby is authorized to file the foregoing supplemental and amending petition.

Granted this 3rd day of May, 1968.

/s/ E. GORDON WEST  
*U. S. District Judge*

Motion for issuance of Temporary Restraining Order is DENIED.

May 3, 1968.

/s/ E. GORDON WEST  
*U. S. District Judge*

STATE OF LOUISIANA  
PARISH OF EAST BATON ROUGE

BEFORE ME, William C. Bradley, a Notary Public, duly commissioned and qualified within and for the Parish and State aforesaid, and therein residing, personally came and appeared:

MRS. IMOGENE WILEY COLEMAN

who, after being by me first duly sworn, did depose and say:

She is the wife of Edgar L. Coleman, residing at 908 Florida Boulevard, Denham Springs, Louisiana, and the Mother of four (4) children, ranging in age from six (6) to ten (10).

On Monday, April 29, 1968, she was visiting the residence of Wade McClanahan which is located immediately adjacent to the East of her residence at approximately 4:30 o'clock p.m., when she saw three (3) men disembark from an automobile that came to a parked position immediately in front of the residence of Wade McClanahan and thereupon three (3) men rushed to the Wade McClanahan home with firearms in their hands including what appeared to be a twelve (12) gauge shotgun, a high powered rifle and a pistol. Upon arriving at the door the spokesman, who identified himself as Brandon, stated that they wanted to see Wade McClanahan, and in response to which Mrs. McClanahan asked why and Brandon advised that they had a warrant for his arrest. Mrs. McClanahan advised that Mr. McClanahan was not in the house, whereupon Brandon accused her of lying and told her he would arrest her and put her in jail for lying. At that point she responded to Brandon and assured him that McClanahan was not in the house. Brandon thereupon demanded that Mrs. McClanahan move out of the door because they were coming into the house. She responded that they would not do so without a search warrant. They argued with her that they could come into the house without a warrant and search the house and

arrest him and further stated that according to McClanahan's doctor, McClanahan was suppose to be in bed in his house and that if McClanahan's doctor was lying that he too would be put in jail. Finally the three men went next door and hid inside the next door neighbor's house until Mr. McClanahan arrived approximately twenty (20) minutes thereafter.

Upon his arrival the three (3) men mentioned rushed with their firearms at the ready and pointed towards Mr. McClanahan and demanded that he get out of his car and put his hands over his head and then ordered him to put his hands on top of the car and then proceeded to search him. McClanahan requested to read the arrest warrant but this was refused whereupon Mrs. McClanahan came out of the McClanahan residence and proceeded to attempt to read the arrest warrant. Before she could complete her reading of it, Brandon forcefully shoved her aside and in so doing knocked her against a nearby tree. Because of the conduct of these individuals and the brutality mentioned, the McClanahan children became frantically excited screaming and young Richard Wade McClanahan age four (4) ran toward his Father while exclaiming "Daddy, Daddy, Daddy," and as he got near his Father one of the men whose name is Maronneaux and who had in his hand a high-powered rifle whirled about, pointed the rifle to the child's head and commanded him to move away. Thereupon, affiant took the child into the McClanahan house and away from the firearms and the arresting men.

Thereafter, the said three (3) men ordered McClanahan into their vehicle and Brandon drove away with him, leaving the other two (2) men to guard the area and within a matter of about five (5) minutes thereafter the McClanahan house was surrounded by numerous police officers numbering at least seven (7) all of whom had either a shotgun or a rifle in their hands at the ready at all times. After a short period of time Brandon returned and together with

other officers proceeded to search the McClanahan house. The search continued for a period of approximately thirty (30) minutes and Brandon left the house and took into his possession a box of shotgun shells. He took possession of the shotgun shells over the protest of Mr. William Bradley, Attorney at Law, Baker, Louisiana, who was there present.

/s/ MRS. IMOGENE WILEY COLEMAN  
Mrs. Imogene Wiley Coleman

SWORN TO AND SUBSCRIBED before me, Notary Public, on this, the 2nd day of May, 1968.

/s/ WILLIAM C. BRADLEY  
William C. Bradley,  
*Notary Public*

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STATE OF LOUISIANA  
PARISH OF EAST BATON ROUGE

GEORGE WYATT, being first duly sworn, did depose and say:

Heretofore he was employed as an undercover investigator for the Labor Management Commission of Inquiry of Louisiana, taking orders alternately from officers and investigators of said Commission of Inquiry including Raymond Ruiz and Joseph A. Oster; that he was advised by his superiors that every effort should be made to criminally involve Edward Grady Partin primarily, and any member of Teamster Local Union Number 5 of Baton Rouge, Louisiana, so as to bring about the criminal prosecution of Edward Grady Partin and members of Teamsters Local Union Number 5; in pursuit of that particular objective he was advised that he should infiltrate the ranks of Teamsters Local Union Number 5 after which he would be provided with explosives to be used for the purpose of destroying equipment belonging to Barber Brothers Contractors; that

thereafter he was to subscribe to a statement to the effect that, and to testify accordingly, the destruction by bombing of said equipment was done pursuant to instructions given to him by Edward Grady Partin; that officials of Barber Brothers Contractors were made aware of this plot to frame Edward Grady Partin and consented thereto, hedging only to the extent of emphasizing that only the old equipment of Barber Brothers Contractors should be singled out for destruction; in furtherance of said plot affiant was employed by Barber Brothers Contractors under a pseudo name and used license plates from the State of Minnesota on his vehicle.

Affiant further states that he was advised that J. D. Arnold, Wade McClanahan, Terry George, Jerry Sylvester, Hugh Marionneaux and Lloyd Kitchen, members of Teamsters Local Number 5 of Baton Rouge, Louisiana, could be shot and killed by members of the Commission of Inquiry at the slightest provocation in a manner that would make it appear to be an act of self-defense and that complete immunity would be given to any employees of the Commission of Inquiry who would kill said persons.

Affiant further states that he was told by officials of the Labor Management Commission of Inquiry of Louisiana that as much as Fifty Thousand (\$50,000.00) Dollars could be obtained from persons representing James R. Hoffa to pay to affiant in return for getting Edward Grady Partin by any means to admit that his testimony against James R. Hoffa was not entirely correct.

Affiant states that he was given carte blanche authority to do anything that he thought might be effective, regardless of the legality thereof, so long as there could be developed a factual basis for the criminal prosecution of Edward Grady Partin.

Affiant further states that after criminal charges were filed against Roderick Jenkins and after it became evident

that there was no basis for the filing of said criminal charges, Joseph A. Oster, investigator for the Labor Management Commission of Inquiry, in responding to your affiant's statement to the said Oster that it was his information Jenkins had a number of witnesses who would testify that in fact he was on the job site of his employment at the time of the alleged criminal activities for which he was charged, the said Joseph A. Oster stated that he and members of the Labor Management Commission of Inquiry would find and bring to testify for each witness testifying on behalf of Jenkins, persons who would testify to the contrary and that if Jenkins had fifty witnesses to testify that he was not in Plaquemine, Louisiana, at the site of the criminal activities alleged in the charge against him, Oster and members of the Labor Management Commission of Inquiry would have fifty-one witnesses to say that he was there.

/s/ **GEORGE D. WYATT**  
**George Wyatt**

SWORN TO AND SUBSCRIBED before me on this 2nd day of May, 1968.

/s/ **WILLIAM C. BRADLEY**  
**Notary Public**

STATE OF LOUISIANA  
PARISH OF EAST BATON ROUGE

WADE McCCLANAHAN, being first duly sworn, did depose and say that:

He was a member of Teamsters Local Union Number 5, is married and has four children.

During the latter part of the month of March, 1968, one Billy D. Miller, theretofore known by your affiant, appeared at your affiant's residence at 914 Florida Boulevard, Denham Springs, Louisiana, and visited with him for three or four days.

On or about April 2, 1968, said Billy D. Miller invited affiant to accompany him to Dallas, Texas, which affiant did; upon arrival in Grapevine, Texas, a suburb of Dallas, Texas, said Billy D. Miller advised affiant that he was an employee of the Labor Management Commission of Inquiry of Louisiana; that he, Miller, did not feel that the Teamsters Local Union had treated affiant fairly; that the Commission of Inquiry of Louisiana had authorized him, the said Miller, to arrange a meeting with Joseph A. Oster and Thomas McFerrin of the Commission of Inquiry to work out an arrangement whereby the said affiant would agree to testify against Edward Grady Partin, in return for which affiant would be granted complete immunity for anything that he may have done in the State of Louisiana or for which he was charged plus the fact that he would be given the sum of One Hundred Thousand (\$100,000.00) Dollars, which money would be donated to the Commission by Texaco, Shell and Esso Oil Companies; affiant states that his response was that he did not know anything of a criminal nature or otherwise against the said Edward Grady Partin; the said Miller responded that affiant did not have to know anything against the said Partin; that representatives of the Commission of Inquiry would tell affiant what to say and all affiant had to do was to swear to the truthfulness of whatever he was told to say.

Affiant states that his first reaction was one of outrage but he suppressed his emotions long enough to determine the authenticity of Miller's representation. Affiant further states that he informed Miller he was agreeable and asked the said Miller if he could immediately reach the authorized representatives of the Commission of Inquiry of Louisiana to make the arrangement proposed by the said Miller; affiant states that the said Miller informed affiant he could do so immediately; whereupon affiant made a long-distance telephone call after which affiant states that Miller represented that Joseph A. Oster and Thomas McFerrin were

immediately going to leave for Dallas, Texas, and upon their arrival would meet with affiant for the purpose of making the arrangements for obtaining a statement from the said affiant.

Affiant states that after being so informed he turned on the said Miller and verbalized his appraisal of him by informing said Miller that he, the said Miller, was a moral outcast and a worthless person to believe that affiant would engage in such a fraudulent scheme.

Affiant further states that the said Miller advised him that the Commission was to pay him, the said Miller, the sum of Five Thousand (\$5,000.00) Dollars for arranging the conference with affiant and the ultimate securing of affiant's statement; affiant further states that the said Billy D. Miller informed affiant that said Joseph A. Oster had caused a money order of Two Hundred (\$200.00) Dollars to be wired to the said Billy D. Miller in part payment of his services in the acts described herein.

/s/ WADE McCCLANAHAN  
Wade McClanahan

SWORN TO AND SUBSCRIBED before me on this 2nd day of May, 1968, at Baton Rouge, Louisiana.

/s/ [Illegible]  
Notary Public

[Certificate of Service omitted]

[Filed May 9, 1968]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

**Motion**

RODERICK JENKINS, appearing through counsel, respectfully moves the court to issue a certificate as to its denial of movant's application for a temporary restraining order dated May 3, 1968, notice of which was given movant's counsel only on May 8, 1968, to the effect that said order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.

J. MINOS SIMON  
1408 Pinhook Road  
Post Office Box 52116, OCS  
Lafayette, Louisiana

/s/ J. MINOS SIMON  
*Attorney for Movant*

Motion for certificate of probable Cause DENIED, May 9, 1968.

E. GORDON WEST  
*U. S. District Judge.*

[Filed May 9, 1968]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

**Notice of Appeal**

To: ASHTON L. STEWART  
Special Assistant Attorney General  
604 Union Federal Building  
Baton Rouge, Louisiana 70801

PLEASE TAKE NOTICE that plaintiff in the captioned cause does hereby appeal from the judgment of the court rendered on May 3, 1968, whereby plaintiff's application for a temporary restraining order was denied, to the United States Court of Appeal, Fifth Circuit.

LAFAYETTE, LOUISIANA, this 9th day of May, 1968.

J. MINOS SIMON  
1408 Pinhook Road  
Post Office Box 52116, OCS  
Lafayette, Louisiana

/s/ J. MINOS SIMON  
Attorney for Plaintiff

[Filed May 13, 1968]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

**Designation of Record on Appeal**

To: **A. DALLAM O'BRIEN, Clerk**  
United States District Court  
Eastern District of Louisiana  
New Orleans, Louisiana

PLAINTIFF hereby designates for inclusion in the record on appeal the following:

1. All of the pleadings filed by the parties litigant, including plaintiff's original complaint, supplemental complaint with annexed affidavits, and defendants' answer and motion to dismiss.
2. All minute entries that will disclose all hearings had in connection herewith and any oral reason for judgment given by the court and such other matters as may be pertinent to this case.
3. The judgment appealed from.

J. MINOS SIMON  
1408 Pinhook Road  
Post Office Box 52116, OCS  
Lafayette, Louisiana

/s/ **J. MINOS SIMON**  
*Attorney for Plaintiff*

[Certificate of service omitted]

[Filed May 15, 1968]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

**Motion To Vacate and Set Aside Notice of Taking of Deposition:  
To Examine by Written Interrogatories Rather Than Oral  
Deposition: To Stay Taking of Examination**

John Julian McKeithen, one of the defendants, moves to vacate and set aside the notice of taking his deposition, served on his undersigned counsel at 3:30 P.M., May 14, 1968, by the plaintiff, to take his deposition at 1:30 P.M. on May 16, 1968, on the following grounds:

1.

The said notice to take the deposition of mover, who is Governor of the State of Louisiana, was served by the plaintiff with the sole purpose and intent of achieving notoriety and publicity.

2.

Mover, in the alternative, moves that if the court finds that his deposition be taken, it should only be taken upon written interrogatories so that it can be limited to matters relevant to this cause.

3.

Mover, in the further alternative, moves that if the court finds that his deposition be taken and that it should not only be taken upon written interrogatories, it should be stayed until the adjournment of the Legislature of Louisiana, which is presently in session and mover's time is so taken up with affairs of state as Governor of Louisiana,

and in connection with said session, as to make it impracticable to be deposed at this time.

BY ATTORNEYS,

JACK P. F. GREMILLION,  
*Attorney General of the  
State of Louisiana*

ASHTON L. STEWART,  
*Special Assistant Attorney  
General of Louisiana*

By /s/ ASHTON L. STEWART  
Ashton L. Stewart,  
*Trial Attorney*  
604 Union Federal Building  
Baton Rouge, Louisiana 70801  
Telephone No. 342-4796

*Attorney for Defendants*

Motion to vacate and set aside notice of taking of depositions of def. John Julian McKeithen is GRANTED, and motion to stay the taking of said defendants' testimony by oral deposition or otherwise is GRANTED pending further order of this court.

Baton Rouge, La., May 15, 1968.

/s/ E. GORDON WEST  
*U. S. District Judge*

[Certificate of service omitted]

[1]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

Docket No. 68-38

RODERICK JENKINS

versus

JOHN J. McKEITHEN, CECYL MORGAN, PAUL M. HEBERT,  
FLOYD C. BOSWELL, RALPH E. HOWE, A. R. JOHNSON,  
III, BURT S. TURNER, ET AL

Argument of counsel re taking of the deposition of Roderick Jenkins, Plaintiff, pursuant to notice and subpoena, in the Bankruptcy Courtroom, 3rd Floor, Post Office Building, Baton Rouge, Louisiana, on the 15th day of May, 1968, commencing at 2:05 P.M.

APPEARANCES:

J. MINOS SIMON, Esq.,  
1408 Pinhook Road,  
Lafayette, Louisiana

*For Plaintiff*

ASHTON L. STEWART, Esq.,  
of the firm of Laycock &  
Stewart, Union Federal Building,  
500 Laurel Street, Baton Rouge,  
Louisiana

*For Defendants*

[2] Mr. Stewart: I call Mr. Jenkins.

Mr. Simon: Before we do that, Mrs. Parker, do you know who all is present in this room?

The Reporter: No. sir, I don't.

Mr. Simon: Register my request that the room—that all the persons in here be removed from the room, be excluded during the course of this deposition.

Mr. Stewart: Of course, there's no basis for that and we object to it.

Mr. Simon: Now, Mrs. Parker, I ask that you—if you'll be kind enough to identify or have each party rise or otherwise state his name and identify his position.

Mr. George: James A. George, assistant counsel, Labor-Management Commission of Inquiry.

Mr. Yelverton: Jack Yelverton, assistant attorney general.

Mr. Scullin: Kenneth Scullin. Don't show me as counsel in this case.

Mr. Oster: Joseph A. Oster, staff investigator, Labor-Management Commission of Inquiry.

Mr. George: Janet, I'm not counsel of record [3] in this case.

Mr. Lieux: John Lieux, research assistant, Labor-Management Commission.

Mr. Roberts: Harry Roberts, chief investigator Labor-Management Commission of Inquiry.

Mr. Curley: James Curley, staff investigator, Labor-Management Commission.

Mr. Ruiz: Raymond Ruiz, staff investigator, Labor-Management Commission of Inquiry.

Mr. Ross: Nick Ross, staff investigator, Labor-Management Commission of Inquiry.

Mr. Roussel: Edward Roussel, staff investigator, Labor-Management Commission.

Mr. Brandon: Roger Brandon, staff investigator, L.M.-C.I., Labor-Management Commission of Inquiry.

Mr. Simon: Now, it is requested that all of these parties identified remove themselves from this room at this time,—

Mr. Stewart: And it's objected to.

Mr. Simon: —or else there will be no deposition given. Obviously these parties collectively represent the police force of the Labor-Management Commission of Inquiry, [4] as to which complaint is registered in this litigation as being involved in the deprivation of the legal rights of the plaintiff and those similarly situated, and their presence collectively, and under these circumstances, amounts

to an intimidation—police intimidation of the parties to the litigation. They are strangers to this litigation and, therefore, have no business in this room during the taking of this deposition.

Mr. Stewart: I'd like the record to show that we have interviewed and solicited information from everyone of these men with reference to the allegations made in this plaintiff's petition and in a supplemental petition and the affidavits that he has filed in this record, that they have been working with and assisting me in preparation for the trial, and that it is most important that they be here present to listen to this testimony for the purpose of properly assisting in the handling of the case when it is tried, and we request [5] that Mr. Jenkins now step forward and take the oath and subject himself to the deposition.

Mr. Simon: Mr. Jenkins will not take an oath and subject himself to an examination under these circumstances. He's here present to respond to your notice to take his deposition; he is willing to give his deposition, but he is, not willing to submit himself in the presence—or to the presence of these police officers at this time for the taking of the deposition.

Mr. Stewart: There's no difference between—

Mr. Simon: In other words,—

Mr. Stewart: —this case and the trial in open court. He's going to have to testify in one or the other and they are going to be present then because they are going to be witnesses.

Mr. Simon: Well, they'll be segregated, too; I'm quite certain of that.

Mr. Stewart: I'm not certain at all of that.

Mr. Simon: There's no point in arguing it any further, Mr. Stewart. That's my position and he's not going to testify.

[6] Mr. Stewart: You refuse to have him deposed?

Mr. Simon: Well, if you don't understand my statement, I can't amplify it for you any further. I've stated to you the fact that he would submit himself to the deposition in

response to the notice; he is here for that purpose, but he will not submit himself to examination in the presence of all of these police officers.

Mr. Stewart: Let the record so show, Mrs. Parker.

Mr. Simon: We are also here for the deposition of Mr. Wyatt. I'd like to have you call out to determine whether or not he is available, if you will be so kind, Mrs. Parker.

(The Reporter called for Mr. Wyatt at this time.)

The Reporter: There is no such person present.

Mr. Simon: I'll ask Counsel if—have you issued a subpoena for him?

Mr. Stewart: We have issued a subpoena for him. We also noticed counsel for plaintiff, and we would like to ask counsel for the plaintiff if it is not true that Mr. Wyatt has been working and assisting him in the [7] handling of this and other cases that he is now handling.

Mr. Simon: When you want to take my deposition, you comply with the rules provided for it, I'll be glad to consider your question at that time.

Mr. Stewart: Well, I'm asking you as a counsel of record because I want to submit this to the Court.

Mr. Simon: I'm telling you as counsel of record. If you want to take my deposition and comply with the rules I'll be very glad to consider that question.

Mr. Stewart: Well, we'll let the Court pass on that, Mr. Simon.

Mr. Simon: By all means. I'm in favor of that completely now.

Mr. Stewart: And I wish the reporter would note the hour now, too. We understand that he is not coming insofar as you know, Mr. Simon?

Mr. Simon: When you want to take my deposition and you comply with the rules, I'll be very glad to consider any questions that you have or that you wish to propound to me. [8] You can understand the rules as well—or you should, as well as I do or any other practicing attorney, so

don't—I don't want you to waste your time asking questions to me today.'

Mr. Stewart: I think I have a perfect right to ask you here now and I'm so asking you.

Mr. Simon: I disagree.

Mr. Stewart: Well, O.K.

Mr. Simon: Now, I take it that you are now abandoning your effort to take the deposition of the plaintiff.

Mr. Stewart: I'm going to submit the matter to the Court, Mr. Simon.

Mr. Simon: Well, all right. Now, we are here and of course the record speaks for what our position is and we now—we take leave of this room under the understanding that Mr. Stewart has declined and declines to proceed with the taking of the deposition of Mr. Jenkins, and he will do so only upon the insistence that all of those persons named heretofore remain present during the entire taking of this particular deposition. We reiterate at this time that Mr. [9] Jenkins is available, able and willing to give his deposition pursuant to notice, provided that the deposition be taken outside the presence of all these officials of the State of Louisiana.

Mr. Stewart: That's all, Mrs. Parker.

ADJOURNED AT 2:20 P. M.

10 State of Louisiana:

Parish of East Baton Rouge:

I, Janet L. Parker, Reporter within and for the Parish of East Baton Rouge, State of Louisiana, do hereby certify that the above and foregoing pages constitute a true and correct transcription of the argument of counsel which transpired re the taking of the deposition of Roderick Jenkins, Plaintiff, pursuant to notice and subpoena, in the Bankruptcy Courtroom, 3rd Floor, Post Office Building, Baton Rouge, Louisiana, on the 15th day of May, 1968, commencing at 2:05 P.M.

That J. Minos Simon, Esq., 1408 Pinhook Road, Lafayette, Louisiana, represented the plaintiff; and Ashton L. Stewart, Esq., of the firm of Laycock & Stewart, Union Federal Building, 500 Laurel Street, Baton Rouge, Louisiana, represented the defendants; and that each was present during the entire proceedings.

That I am not an attorney or counsel for any of the parties, nor am I a relative or an employee of any attorney or counsel connected with this action, nor am I financially interested in this action.

Baton Rouge, Louisiana, this 15th day of May, 1968.

JANET L. PARKER

*Reporter*

Parish of East

Baton Rouge

State of Louisiana

[1]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION  
No. 68-38  
RODERICK JENKINS  
versus

JOHN JULIEN McKEITHEN, CECYL MORGAN, PAUL M. HESSNER,  
FLOYD C. BOSWELL, RALPH F. HOWE, A. R. JOHNSON, III,  
BURT S. TURNER, ET AL.

The deposition of Wade McClanahan, witness in the Federal Court Action, taken at the instance of defendants in the Federal Court Action in the Livingston Parish Court-house, located at Livingston, Louisiana, commencing at 2:16 P.M., on the 17th day of May, 1968.

APPEARANCES:

For plaintiff

J. MINOS SIMON, Esq., 1408 Pinhook Road, Post Office  
Building 52116, OCS, Lafayette, Louisiana

For defendants

ASHTON L. STEWART, Esq., Special Assistant Attorney  
General, 604 Union Federal Building, Baton Rouge,  
Louisiana

For Wade McClanahan, Mrs. Imogene Coleman and Mrs.  
Wade McClanahan

DENNIS R. WHALEN, Esq., Attorneys Building, 300  
Louisiana Avenue, Baton Rouge, Louisiana

AND

WILLIAM C. BRADLEY, Esq., 3022 Ray Weiland Drive,  
Baker, Louisiana

AND

G. EMMITTE CORE, Esq., 1926 Wooddale Boulevard,  
Baton Rouge, Louisiana

[2]

## STIPULATION

It is agreed and stipulated by and between counsel for the parties in the case above numbered and entitled that the testimony of Wade McClanahan, witness in the Federal Court Action, may be taken at the instance of defendants in the Federal Court Action pursuant to notice before Janet L. Parker, reporter, on the 17th day of May, 1968, in the Livingston Parish Courthouse, Livingston, Louisiana, commencing at 2:16 P.M.; that the witness was sworn by Beatrice Lea, Deputy Clerk and ex-officio Notary Public in and for the Parish of Livingston, State of Louisiana; that the testimony shall be taken under oral examination and that the parties waive the usual delays as required by the Rules of Federal Procedure; that the reading and signing of the deposition are waived by the parties and by the witness; that excepting as otherwise stipulated in this stipulation, the said deposition shall be taken and may be used in the said Federal Court Action pursuant to any of the Rules of Federal Procedure relative thereto.

[3] Mr. Bradley: Mr. Stewart, before we start—and I'd like this on the record, please, Janet—there are a number of persons in the courtroom here, in the Livingston Parish courtroom, and I'd like either that those persons identify themselves for the record, or that they—if they will not identify themselves for the record then I'm going to object to their presence and object to the taking of this deposition unless they do so identify themselves. I recognize some of them, of course, but I do not know all of them, and I think I'm entitled to know the names and identities of the persons that are present in the courtroom and who they represent.

Mr. Stewart: I have no objection. We can start at that end of the table over there, the conference table.

Mr. Bradley: This, of course, is—

Mr. Core: Emitte Core, spelled E-m-i-t-t-e C-o-r-e.

Mr. Bradley: Of course, I'm William C. [4] Bradley.

Mr. Jenkins: Roderick Jenkins.

Mr. Stewart: Mr. Simon is attorney for the plaintiff here and I'm Ashton Stewart, attorney for the defendant.

Mr. George: James A. George.

Mr. Bradley: The gentlemen seated in the jury box?

Mr. Curley: James Curley, Staff Investigator, Labor-Management Commission of Inquiry.

Mr. Scullin: Scullin.

Mr. Bradley: Mr. Scullin, I presume, is Kenneth C. Scullin. Would you state your title please, Mr. Scullin?

Mr. Scullin: Assistant Attorney General.

Mr. Bradley: For the State of Louisiana.

Mr. Marionneaux: Barry Marionneaux, Attorney General's office.

Mr. Bradley: In what capacity, Mr. Marionneaux?

Mr. Marionneaux: Investigator.

Mr. Bradley: Mr. Hamilton.

Mr. Hamilton: Herbert Hamilton, State Police.

[5] Mr. Oster: Joseph A. Oster, Staff Investigator, Labor-Management Commission of Inquiry.

Mr. Brandon: Roger Brandon, Staff Investigator, Labor-Management.

Mr. Munson: I'm Richard Munson, State Editor of the *Morning Advocate*.

Mr. Bradley: And seated in the back of the courtroom, of course, is Mrs. Edgar L. Coleman and Mrs. Wade McClanahan.

Mr. Stewart: Would you state your capacity, Mr. Bradley?

Mr. Bradley: I'm representing Mr. McClanahan, as is Mr. Core and Mr. Dennis Whalen, who will be up in just a few moments.

Mr. Stewart: Fine.

The Reporter: Mr. Simon is representing—

Mr. Simon: Roderick Jenkins between us.

**Wade McClanahan**

The Witness, Wade, McClanahan, having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, so help him God, testified as follows:

By Mr. Stewart:

Q. Give us your full name, please, sir. [6] A. Wade McClanahan.

Q. How old are you? A. 34 years old.

Q. What is your residence now? A. 914 Florida Boulevard, Denham Springs, Louisiana.

Q. How long have you lived there? A. I refuse to answer that question on the grounds that anything I might say—under the 5th Amendment—under my constitutional right of the 5th Amendment, anything I might say might be incriminating.

Q. What is your occupation? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

Q. Where were you born, Mr. McClanahan? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

Q. Do you belong to the Teamsters Local No. 5 Union? A. I refuse to answer that question under my constitutional right of the 5th Amendment, that anything I might say might be incriminating.

Q. Did you, on or about May 2nd, 1968, sign an affidavit before William C. Bradley, Notary Public of the Parish [7] of East Baton Rouge? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on anything I might say might be incriminating.

Q. In this affidavit did you or did you not state that you "was"—and I quote the word "was" rather than the word "is"—a member of the Teamsters Local Union No. 5? A. I refuse to answer that question under my con-

stitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

Q. Well, do you know a Billy D. Miller? A. I refuse to answer that question under my constitutional right of the 5th Amendment, that anything I might say might be incriminating.

Q. Did you ever made a statement that Miller had attempted to work out an arrangement for you to testify to the truth with reference to Edward Grady Partin? A. I refuse to answer that, grounds under my constitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

Mr. Simon: Counsel, may I suggest that obviously he's going to take the 5th Amendment throughout. Why don't you ask [8] him if he intends to take it in answer to every question?

By Mr. Stewart:

Q. Are you going to take the 5th Amendment on every question that I might ask you with reference to this affidavit that you signed, dated May 2nd, 1968? A. I refuse to answer that question on the grounds that anything I say might be—I'll take the 5th Amendment on anything you ask me. Yes, sir.

Q. Anything I ask? A. Yes, sir.

Q. No matter.

Mr. Stewart: Well, next witness. That's the answer.

Mr. Scullin: Just a minute, Ashton.

Mr. Stewart: All right.

By Mr. Stewart:

Q. Have you ever worked with Billy D. Miller? A. I refuse to answer under my constitutional right of the 5th Amendment, on the grounds that anything that I might say might be incriminating.

Q. Did you ever tell Miller that Partin refused to pay you? A. I refuse to answer under my constitutional right

• of [9] the 5th Amendment, on the grounds that anything I might say might be incriminating.

Q. Did you particularly ever tell him that in the presence of others on April 1st, 1968? A. I refuse to answer that under my constitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

Q. Did you, on or about April 1st, 1968, shortly after breakfast, while at the Bellemont Motel in Baton Rouge, after talking over the telephone with Ed Partin, make the statement to those present, including one Miller, that you were afraid Ed Partin was going to set you up to kill you? A. I refuse to answer under my constitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

Q. Did you shortly thereafter, that is, on April 1st or 2nd, go to the residence of Edgar L. Coleman and get a rifle— A. I—

Q. —and take it from his house? A. —I refuse to answer under my constitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

[10] Q. Did you take that rifle to your home and put it in your closet? A. I refuse to answer on the grounds of the 5th Amendment on—that anything I might say might be incriminating.

Q. Did you tell anyone on April 1st or 2nd and 3rd, that you were very concerned for the safety of your wife and children?

Mr. Bradley: I'm going to object to the form of the question unless it is couched in terms that would designate specifically as to whom "anyone" may have been. The question is too broad and the witness obviously cannot answer it.

Mr. Simon: And I'd like to ask the purpose of the question.

Mr. Stewart: The purpose of the question is as to his affidavit, as to whether he's telling the truth or not, to

find out the basis of the facts that you have filed in this affidavit, and we want to test its correctness.

Mr. Simon: By whether or not his wife and his children are in jeopardy from Ed Partin?

[11] Mr. Stewart: Well, whatever the basis of the question allows is the basis for attacking his credibility under his affidavit.

Mr. Simon: I object also to the form of the question. It's a leading question.

Mr. Stewart: Well, I'll rephrase the question.

A. (The witness did not reply.)

By Mr. Stewart:

Q. Did you ever tell anyone in the presence of Miller, Billy D. Miller, in the Parish of East Baton Rouge, especially at the Bellmont Motel, that you were concerned for the safety of your family and your wife and children?

Mr. Simon: That's a leading question. We object to it.

Mr. Bradley: I'm going to object to it additionally on the grounds that again he is asking the witness a question that he obviously cannot answer. He's asking him did he tell anyone, and I think the witness can only answer if he would designate and identify the [12] persons to whom he is referring by the generalization, "anyone."

A. (The witness did not reply.)

By Mr. Stewart:

Q. Well, did you tell Billy D. Miller that you were concerned for the safety of your wife and children?

Mr. Simon: Leading question. Object to it.

A. I refuse to answer that on the constitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

By Mr. Stewart:

Q. Did you tell Billy D. Miller, on April 1st, 1968, that you were going to Dallas, Texas to turn evidence in against

Edward G. Partin? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

Q. And that you were going to Dallas, Texas to get the Teamsters who were loyal to Hoffa, in order to give them that information? A. I refuse to answer—

Mr. Simon: Leading question. Object to—

A. —that question under my constitutional right of [13] the 5th Amendment, on the grounds that anything I might say might be incriminating.

By Mr. Stewart:

Q. Did you go to Dallas, Texas on or about this date?

Mr. Simon: Leading question. Object to it.

A. I refuse to answer under my constitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

By Mr. Stewart:

Q. Do you have any kinfolks living in Dallas, Texas? A. I refuse to answer that under my constitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

Q. Have you ever lived in Dallas, Texas? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I say might be incriminating.

Q. Was your wife a native born and reared Dallas, Texas—

Mr. Simon: Leading question. I'm objecting to it.

A. I refuse to answer that question on the grounds that anything I might say might be incriminating.

[14] By Mr. Stewart:

Q. Did you go to your wife's father's restaurant in Dallas, Texas, on or about April 2nd, 1968, early in the morning, of that morning?

Mr. Simon: Object to it, on the grounds that it's a leading question.

A. (The witness did not reply.)

By Mr. Stewart:

Q. Will you answer the question? A. I plead the 5th Amendment.

Mr. Simon: And I'm—Counsel, you're not entitled to ask leading questions and you're persisting in it. Now, I think you might agree with me that all your questions are leading, and you persist in doing this, and if you continue to do so I will have to reach the conclusion that you're not propounding your questions in good faith, and I will interrupt the taking of the deposition on behalf of Mr. Jenkins for the purpose of getting a Court order to stop you from asking leading questions.

Mr. Stewart: Well, I want to ask nothing [15] but direct questions.

Mr. Simon: Well, you're not doing it, and I will—

Mr. Stewart: Well, I will rephrase them so that they will; they won't all satisfy you, I'm sure, but I'm going to try to do the best that I can—

Mr. Simon: Well, these—none has satisfied me thus far and you have not heeded my objection; you've gone right ahead, and you know that the form of the question which we're objecting to now cannot be waived, and I'm not just going to continue doing this. I've got to assume that you're not propounding them in good faith if you continue. You have been practicing too long not to know leading questions.

Mr. Stewart: Well, I'm sure you're an expert, Mr. Simon.

Mr. Simon: I hope that I am. I'd sure—

Mr. Stewart: The Courts have not always agreed with you.

Mr. Simon: —like to be one.

[16] By Mr. Stewart:

Q. Do you know a Mr. L. E. Samuel, of Grapevine, Texas? A. I plead the 5th Amendment, on the grounds that anything I say might be incriminating.

Q. Did you ever discuss your difficulties with Ed Partin with him in Grapevine, Texas,—

Mr. Simon: That's a leading— A. (The witness did not reply.)

By Mr. Stewart:

Q.—on or about April 2nd, 1968?

Mr. Simon: —that's a leading question, and not only that, your question assumes a set of facts not testified to, because your question assumes that he has had difficulty with Ed Partin, and there's not a word of evidence that he has had that.

Mr. Stewart: Well,—

Mr. Simon: Now, do you intend to withdraw that question, or persist in it?

Mr. Stewart: I intend to persist in the question because it is not objectionable on the grounds that you have said, because I've asked him previous questions; he has refused to answer.

[17] Mr. Simon: Yes, if you—

Mr. Stewart: If I can't assume something was the basis for a question, I can't ask a question.

Mr. Simon: You cannot assume anything as a basis for a question, because—

Mr. Stewart: Oh, yes, I can.

Mr. Simon: —that impregnates the question with the leading quality that is objectionable as to form.

Mr. Stewart: Well, let me go over it again. A. (The witness did not reply.)

By Mr. Stewart:

Q. Let me rephrase it for you. Have you ever had any difficulties with Ed Partin prior to going to—prior to on

or about April 2nd, 1968? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

Q. Did you ever discuss with anyone that you had difficulties with Mr. Partin? A. I refuse to answer that question on the grounds that anything I might say might be incriminating.

[18] Q. Particularly, did you discuss with Mr. L. E. Samuel any difficulties you may have had with Partin? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I say might be incriminating.

Q. Did you ever tell Mr. L. E. Samuel in Grapevine, Texas, anything with reference to turning state's evidence against Mr. Partin? A. I plead the 5th Amendment on everything you ask me.

Q. Have you ever been convicted of a crime, Mr. McClanahan? A. I refuse to—

Mr. Simon: I'd like to ask the purpose of that question.

Mr. Stewart: Because it is—goes in with the next question I want to ask, because he was out on bond at the time he was in Grapevine, Texas, and he was making arrangements so that Mr. Partin would not yank him back in jail because Mr. Partin had signed his bond. It's tied in with the next question.

Mr. Simon: I hope so. I can't see how it is, but I'll wait.

[19] By Mr. Stewart:

Q. Have you ever been convicted of a crime? A. I refuse to answer this question under my constitutional rights of the 5th Amendment, on the grounds that anything I say might be incriminating.

Q. Are you presently charged with a crime? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I say might be incriminating.

Q. Were any criminal charges pending against you on or about April 2nd, 1968?

Mr. Simon: That's objectionable, because it's not material or relevant on discovery or otherwise.

Mr. Stewart: But it is—

Mr. Simon: And it's a leading question, also.

Mr. Stewart: —with reference to the next question.

Mr. Simon: Well, that—you can tandemly get your questions in if you can't do singly. A. (The witness did not reply.)

[20] By Mr. Stewart:

Q. Well, are you under any informations at the present time? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I say might be incriminating.

Q. Are you at liberty because of bonds having been posted for you because of any criminal prosecution? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I say might be incriminating.

Q. Did you discuss with Mr. Samuel in Grapevine, Texas, your problem of Mr. Partin having obtained these bonds for you? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I say may be incriminating.

Q. Did you receive a telephone call from your wife in the residence of Samuel, in Grapevine, Texas, on or about 11:30 A.M. of that day?

Mr. Simon: A leading question. It's objected to.

A. (The witness did not reply.)

By Mr. Stewart:

Q. Have you ever received a call from your wife, in [21] Grapevine, Texas? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I say might be incriminating.

Q. Have you ever been in Grapevine, Texas?

Mr. Simon: Mr. Stewart, would you agree that I would raise the objection as to form as to all your questions, so my rights will be preserved and I won't interrupt here?

Mr. Stewart: That's all right. I think my questions are more than clear the way I've been asking them.

Mr. Simon: Well, I'm not—I may be sympathetic with your position and your problem, but I'm worried about my client's rights.

Mr. Stewart: Well, I will agree that you need not repeat your objections—

Mr. Simon: So that you waive—in other words, we waive my obligation to object to any question as to form?

Mr. Stewart: To any remaining questions as to form.

[22] Mr. Simon: As to form. All right.

I'll let you go on.

A. (The witness did not reply.)

By Mr. Stewart:

Q. Have you ever had a telephone call from Mr. Partin while away from the City of Baton Rouge? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I say may be incriminating.

Q. Do you know Mr. Partin? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I say may be incriminating.

Q. Did you receive a telephone call from Mr. Partin in Grapevine, Texas, On April 3rd, 1968? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I may say may be incriminating.

Q. Did you have a conversation with Mr. Partin after you talked to your wife, if you talked to your wife? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I say may be incriminating.

Q. Did you immediately leave Grapevine, Texas to come [23] to Baton Rouge after talking to Mr. Partin on the telephone, if you talked to him on the telephone? A. I refuse to answer that question under my constitutional

right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

Q. Have you ever traveled from Grapevine, Texas to Irving, Texas? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I say might be incriminating.

Mr. Stewart: I'd like for a minute recess, please.

(Two minute recess)

By Mr. Stewart:

Q. Do you know a man by the name of Joseph A. Oster? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I say might be incriminating.

Q. Have you ever talked to him? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

Mr. Simon: Counsel, I suggest that the deposition be brought to a halt. He has [24] already announced his intention to take the 5th Amendment as to all the questions, and I can't see any use in your proceeding to propound or to proceed with prospective questions, and I don't know what you hope to establish by it in view of this announcement by the witness. May I ask you what you hope to establish by it if he won't answer your questions?

Mr. Stewart: I don't think he has a right to plead the 5th under most of the questions I've asked him. Certainly I will have a right to strike his affidavit from the record since he will not answer those questions that I have propounded to him.

Mr. Simon: Oh, I don't think you can affect the rights of the third party, any legal rights already established—

Mr. Stewart: When we don't have him for cross examination, we certainly do.

Mr. Simon: No, I don't think so.

Mr. Stewart: Well, let me ask him a few more questions; then I will terminate it.

[25] By Mr. Stewart:

Q. Did you ever have a conversation with Mr. Oster? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

Q. Did you ever have a conversation with him about a hundred thousand dollar reward for turning state's evidence? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

Q. Have you ever borrowed any money from Billy D. Miller? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

Q. Did he ever give you any money? A. I refuse to answer that question under my constitutional right of the 5th Amendment, on the grounds that anything I might say might be incriminating.

Mr. Simon: Why don't you just adjourn the deposition and take a rule on it? I think he has to answer you as to the affidavit. I think he has waived his constitutional rights in that area.

[26] Mr. Stewart: I think so.

Mr. Simon: But I think you have to have a court order to do it.

By Mr. Stewart:

Q. You understand that we are going to ask the Court to hold you in contempt for refusing to answer the questions. A. (The witness did not reply.)

Mr. Simon: Well, I'm not going to agree with that at all. I don't think anybody has got a legal right at this stage to ask for contempt.

Mr. Stewart: Please call Mrs. Coleman.

Witness Excused—2:35 P.M.

## [27] STATE OF LOUISIANA:

## PARISH OF EAST BATON ROUGE:

I, Janet L. Parker, reporter within and for the Parish of East Baton Rouge, State of Louisiana, do hereby certify as follows:

That the witness, Wade McClanahan, was duly sworn by Beatrice Lea, Deputy Clerk and ex-officio Notary Public in and for the Parish of Livingston, State of Louisiana, to testify to the truth, the whole truth, and nothing but the truth, and that the foregoing deposition was taken by me and reduced to typewriting by me.

That the aforesaid deposition constitutes a true record of the testimony given by the witness.

That J. Minos Simon, Esq., 1408 Pinhook Road, Post Office Building 52116, OCS, Lafayette, Louisiana, represented the plaintiff; Ashton L. Stewart, Esq., Special Assistant Attorney General, 604 Union Federal Building, Baton Rouge, Louisiana, represented the defendants; Dennis R. Whalen, Esq., Attorneys Building, 300 Louisiana Avenue, Baton Rouge, Louisiana, and [28] William C. Bradley, Esq., 3022 Ray Weiland Drive, Baker, Louisiana, and G. Emmitt Core, Esq., 1926 Wooddale Boulevard, Baton Rouge, Louisiana, represented Wade McClanahan, Mrs. Imogene Coleman and Mrs. Wade McClanahan; and that each was present during the entire examination.

That the deposition was held in the Livingston Parish Courthouse, Livingston, Louisiana, on the 17th day of May, 1968, commencing at 2:16 P.M.

That I am not an attorney or counsel for any of the parties, nor am I a relative or an employee of any attorney or counsel connected with this action, nor am I financially interested in this action.

Baton Rouge, Louisiana, this 17 day of May, 1968.

JANET L. PARKER

Janet L. Parker

Reporter

Parish of East Baton Rouge

State of Louisiana

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

No. 68-38

RODERICK JENKINS

versus

JOHN JULIEN McKEITHEN, CECYL MORGAN, PAUL M.  
HERBERT, FLOYD C. BOSWELL, RALPH F. HOWE, A. R.  
JOHNSON, III, BURT S. TURNER, ET AL.

The deposition of Mrs. Imogene Coleman, witness in the Federal Court Action, taken at the instance of defendants in the Federal Court Action in the Livingston Parish Courthouse, located at Livingston, Louisiana, commencing at 2:37 P.M., on the 17th day of May, 1968.

APPEARANCES:

For plaintiff

J. MINOS SIMON, Esq., 1408 Pinhook Road, Post Office  
Building 52116, OCS, Lafayette, Louisiana

For defendants

ASHTON L. STEWART, Esq., Special Assistant Attorney  
General, 604 Union Federal Building, Baton Rouge,  
Louisiana

For Wade McClanahan, Mrs. Imogene Coleman and  
Mrs. Wade McClanahan

DENNIS R. WHALEN, Esq., Attorneys Building, 300  
Louisiana Avenue, Baton Rouge, Louisiana

and

WILLIAM C. BRADLEY, Esq., 3022 Ray Weiland Drive,  
Baker, Louisiana

and

G. EMMITTE CORE, Esq., 1926 Wooddale Boulevard,  
Baton Rouge, Louisiana

## STIPULATION

It is agreed and stipulated by and between counsel for the parties in the case above numbered and entitled that the testimony of Mrs. Imogene Coleman, witness in the Federal Court Action, may be taken at the instance of defendants in the Federal Court Action pursuant to notice before Janet L. Parker, reporter, on the 17th day of May, 1968, in the Livingston Parish Courthouse, Livingston, Louisiana, commencing at 2:37 P.M.; that the witness was sworn by Beatrice Lea, Deputy Clerk and ex-officio Notary Public in and for the Parish of Livingston, State of Louisiana; that the testimony shall be taken under oral examination and that the parties waive the usual delays as required by the Rules of Federal Procedure; that the reading and signing of the deposition are waived by the parties and by the witness; that excepting as otherwise stipulated in this stipulation, the said deposition shall be taken and may be used in the said Federal Court Action pursuant to any of the Rules of Federal Procedure relative thereto.

[3]

## Imogene Coleman

The witness, Mrs. Imogene Coleman, after having first been duly sworn to tell the truth, the whole truth, and nothing but the truth, so help her God, testified as follows:

By Mr. Stewart:

Q. Would you give us your full name, please, ma'am?  
A. Mrs. Imogene Coleman.

Q. And what is your husband's name? A. Edgar L. Coleman.

Q. And what is your husband's name? A. Edgar L. Coleman.

Q. What was your maiden name? A. Wiley.

Q. Where do you live, Mrs. Coleman? A. 908 Florida Boulevard, Denham Springs, Louisiana.

Q. How long have you lived there? A. I do not desire to answer the question on the grounds I am married to

Edgar L. Coleman, and anything I say—I can't be compelled to testify against him.

Q. We are not after any evidence against Mr. Coleman at this time, and I will attempt to refrain from asking any questions that I know of that might involve Mr. Coleman. We are trying a lawsuit in which you have filed an affidavit, and I would like to examine you with reference to the 4 facts which you have set forth in that affidavit. Do you know Mr. McClanahan, who just left the witness stand? A. I refuse to answer that question.

Q. On what grounds? A. On the grounds that I am legally married to Edgar L. Coleman, and anything I say—I can't be compelled to testify against him.

Q. Have you ever visited in the Wade McClanahan residence? A. I refuse to answer the question on the grounds that I am married to Edgar L. Coleman.

Q. Well, is your residence near the residence of Wade McClanahan residence? A. I refuse to answer the questions on the grounds that I am married to Edgar L. Coleman and I can't be compelled to testify against him.

Q. Did you sign an affidavit before William C. Bradley on May 2, 1968, in the parish of East Baton Rouge? A. I refuse to answer the question on the grounds that I am legally married to Edgar L. Coleman, and I can't be compelled to testify against him.

Q. Did you in that affidavit state that you witnessed the arrest of Mr. McClanahan? A. I refuse to answer the question on the grounds that I am married to Edgar 5 L. Coleman and can't be compelled to testify against him.

Mr. Stewart: There are some additional people who have just come in. Would you please identify yourselves?

Mr. Whalen: I'm Dennis Whalen.

Mr. Stewart: We have just identified everybody in the courtroom, and we would like to ask these two men who have just come in what their names are.

One Unidentified Man: Is it necessary?

Discussion among counsel re identification of these two men, after which the men departed from the courtroom.

By Mr. Stewart:

Q. Have you ever visited in the McClanahan residence?

A. I refuse to answer the question on the grounds I am legally married to Edgar L. Coleman, who is under criminal charges, and I can't be compelled to testify against him.

Q. Were you visiting in the Wade McClanahan residence on or about 4:30 o'clock P.M. on April 29, 1968?

Mr. Bradley: Let the record show that Mr. Joseph Oster and Hubert Hamilton are apparently leaving the courtroom.

6. Mr. Oster: Yes, we are going to the bathroom.

Mr. Bradley: That's all right. Let the record reflect they are going to the bathroom.

A. (The witness did not reply.)

Off record discussion.

By Mr. Stewart:

Q. At the time of approximately 4:30 o'clock P.M., on April 29, 1968, if you were in the residence of the McClanahan's, did you see three men disembark from an automobile? A. I refuse to answer the question on the grounds I am legally married to Edgar L. Coleman, who is under criminal charges, and I can't be compelled to testify against him.

Mr. Simon: Is our agreement a continuing agreement that we waive the necessity of objecting to the form of the question?

Mr. Stewart: If you want to, yes, I will agree to that continuing objection.

By Mr. Stewart:

Q. If you had answered the previous question, and if that answer was that you had seen three men going into

7 the McClanahan home with firearms, could you tell us what kind of firearms they had? A. I refuse to answer the question on the grounds I am legally married to Edgar L. Coleman, who is under criminal charges, and I can't be compelled to testify against him.

Q. Do you recognize this man sitting in the front row, whose name is Brandon? A. I refuse to answer the question on the grounds I am legally married to Edgar L. Coleman, who is under criminal charges, and I can't be compelled to testify against him.

Q. Have you ever seen him before?

Mr. Simon: Who is that?

A. (The witness did not reply.)

By Mr. Stewart:

Q. Mr. Brandon? A. I refuse to answer the question on the grounds I am legally married to Edgar L. Coleman, who is under criminal charges, and I can't be compelled to testify against him.

Q. Was Mrs. McClanahan present in the home at that time? A. I refuse to answer the question on the grounds I am legally married to Edgar L. Coleman, who is under criminal charges, and I can't be compelled to testify against him.

Q. Was Mr. McClanahan in the home at that time? A. I refuse to answer the question on the grounds that I am legally married to Edgar L. Coleman, who is under criminal charges, and I can't be compelled to testify against him.

8 Mr. Bradley: Miss Janet, let the record indicate that Mr. Oster has returned to the courtroom along with Mr. Hamilton, and they both have very satisfied smiles on their faces, and I assume they have accomplished their purposes.

Mr. Core: Let the record reflect that I brought two gum balls while I was downstairs.

Mr. Simon: Let's let the record stop reflecting nonsense.

By Mr. Stewart:

Q. Did you see a warrant of arrest at that time? A. I refuse to answer the question on the grounds that I am legally married to Edgar L. Coleman, who is under criminal charges, and I can't be compelled to testify against him.

Q. Did you see anyone arrested at that time? A. I refuse to answer the question on the grounds that I am legally married to Edgar L. Coleman, who is under criminal charges, and I can't be compelled to testify against him.

Q. Was Mr. McClanahan arrested at that time? A. I refuse to answer your question on the grounds that I am legally married to Edgar L. Coleman, who is under criminal charges, and I can't be compelled to testify against him.

9 Q. Was Mr. Bradley, who is sitting at the table with counsel, present at that time? A. I refuse to answer the question on the grounds that I am legally married to Edgar L. Coleman, who is under criminal charges, and I can't be compelled to testify against him.

Q. Would you answer any questions if I asked you any other questions? A. I refuse to answer your question on the grounds that I am legally married to Edgar L. Coleman, and I can't be compelled to testify against him.

Mr. Stewart: We ask that the witness step down.

Witness excused at 2:46 P.M.

[10] STATE OF LOUISIANA:

PARISH OF EAST BATON ROUGE:

I, Janet L. Parker, reporter within and for the Parish of East Baton Rouge, State of Louisiana, do hereby certify as follows:

That the witness, Mrs. Imogene Coleman, was duly sworn by Beatrice Lea, Deputy Clerk and ex-officio Notary Public in and for the Parish of Livingston, State of Louisiana, to testify to the truth, the whole truth, and nothing but

the truth, and that the foregoing deposition was taken by me and reduced to typewriting by me.

That the aforesaid deposition constitutes a true record of the testimony given by the witness.

That J. Minos Simon, Esq., 1408 Pinhook Road, Post Office Building 52116, OGS, Lafayette, Louisiana, represented the plaintiff; Ashton L. Stewart, Esq., Special Assistant Attorney General, 604 Union Federal Building, Baton Rouge, Louisiana, represented the defendants; Dennis R. Whalen, Esq., Attorneys Building, 300 Louisiana Avenue, Baton Rouge, Louisiana, and [11] William C. Bradley, Esq., 3022 Ray Weiland Drive, Baker, Louisiana, and G. Emmitte Cere, Esq., 1926 Wooddale Boulevard, Baton Rouge, Louisiana, represented Wade McClanahan, Mrs. Imogene Coleman and Mrs. Wade McClanahan; and that each was present during the entire examination.

That the deposition was held in the Livingston Parish Courthouse, Livingston, Louisiana, on the 17th day of May, 1968, commencing at 2:37 P.M.

That I am not an attorney or counsel for any of the parties, nor am I a relative or an employee of any attorney or counsel connected with this action, nor am I financially interested in this action.

Baton Rouge, Louisiana, this 17 day of May, 1968.

JANET L. PARKER

Janet L. Parker

*Reporter*

Parish of East Baton Rouge  
State of Louisiana

[1]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

No. 68-38

RODERICK JENKINS

versus

JOHN JULIEN McKEITHEN, CECYL MORGAN, PAUL M. HEBERT, FLOYD C. BOSWELL, RALPH F. HOWE, A. R. JOHNSON, III, BURT S. TURNER, ET AL

The deposition of Mrs. Wade McClanahan, witness in the Federal Court Action, taken at the instance of defendants in the Federal Court Action in the Livingston Parish Courthouse, located at Livingston, Louisiana, commencing at 2:47 P.M., on the 17th day of May, 1968.

APPEARANCES:

J. MINOS SIMON, Esq.,  
1408 Pinhook Road, Post Office Building 52116,  
OCS, Lafayette, Louisiana  
*For plaintiff*

ASHTON L. STEWART, Esq.,  
Special Assistant Attorney General,  
604 Union Federal Building,  
Baton Rouge, Louisiana  
*For defendants*

DENNIS R. WHALEN, Esq.,  
Attorneys Building, 300 Louisiana Avenue,  
Baton Rouge, Louisiana

and

WILLIAM C. BRADLEY, Esq.,  
3022 Ray Weiland Drive, Baker, Louisiana

and

G. EMMITTE CORE, Esq.,  
 1926 Wooddale Boulevard,  
 Baton Rouge, Louisiana  
*For Wade McClanahan,*  
*Mrs. Imogene Coleman, and*  
*Mrs. Wade McClanahan*

[2]

## STIPULATION

It is agreed and stipulated by and between counsel for the parties in the case above numbered and entitled that the testimony of Mrs. Wade McClanahan; witness in the Federal Court Action, may be taken at the instance of defendants in the Federal Court Action pursuant to notice, before Janet L. Parker, reporter, on the 17th day of May, 1968, in the Livingston Parish Courthouse, Livingston, Louisiana, commencing at 2:47 P.M.; that the witness was sworn by Beatrice Lea, Deputy Clerk and ex-officio Notary Public in and for the Parish of Livingston, State of Louisiana; that the testimony shall be taken under oral examination and that the parties waive the usual delays as required by the Rules of Federal Procedure; that the reading and signing of the deposition are waived by the parties and by the witness; that excepting as otherwise stipulated in this stipulation, the said deposition shall be taken and may be used in the said Federal Court Action pursuant to any of the Rules of Federal Procedure relative thereto.

[3] The Witness, Mrs. Wade McClanahan, after having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, so help her God, testified as follows:

By Mr. Stewart:

Q. Please give us your full name. A. Mrs. Wade McClanahan.

Q. What was your maiden name? A. Powers.

Q. Powers. What are your given names? A. Mary Lou.

Q. Are you married to Wade McClanahan? A. Yes.

Q. How long have you been married to him? A. I refuse to answer it. I decline to answer because anything I might say—you see, I am legally married to him—will be held against him.

Q. Where does your father live if he is living? A. I decline to answer any questions. Being legally married to Wade McClanahan, anything I might say will be held against him.

Q. Did you make an affidavit at the behest or request of Mr. Bradley or Mr. Simon with reference to the arrest of your husband?

Mr. Bradley: Are you through with the question?

[4] Mr. Stewart: Yes.

Mr. Bradley: I object to the form of the question as leading. There has been no evidence or statement or testimony that I know of that the affidavit was made at the behest of anyone. It is obviously leading and I object to the form of the question.

Mr. Stewart: Well, I don't think you have any right to object to the question, and I'm not going to pay any attention to any objection you make. Mr. Simon is counsel of record and you represent the witness and can only advise the witness.

A. (The witness did not reply.)

By Mr. Stewart:

Q. Will you answer the question, please, ma'am? A. I decline to answer any questions being legally married to Wade McClanahan, and anything I might say—

Mr. Bradley: Excuse me. Let me understand, Mr. Stewart. Do I understand you correctly that—did I understand you correctly that I am not to be permitted according to your understanding of the rule of procedure to interpose any objections to the questions [5] which you may ask?

Mr. Stewart: Not with reference to the lawsuit. You are talking about irrelevant and immaterial, such as that

Mr. Bradley: That's a matter of opinion and your opinion bears no particular weight as far as the law is concerned, sir.

Mr. Stewart: Neither does yours, Mr. Bradley, but that's for the Court to decide. If Mr. Simon, as the counsel of record, makes an objection, that's another proposition. He is a party to this lawsuit.

Mr. Simon: We have our continuing agreement.

Mr. Stewart: It's agreeable with me.

By Mr. Stewart:

Q. Have you ever seen Mr. Brandon, who is sitting in the front row over here? A. I decline to answer any questions.

Q. On April 29th, 1968, was your husband in bed at home, sick? A. I decline to answer any questions.

Q. Did you see your husband arrested on or about April 29, 1968? A. I decline to answer any questions; being legally married [6] to Wade McClanahan anything I might say—and I'm not compelled to answer it.

Q. Did you see any arresting officers at your house on or about April 29, 1968? A. I decline to answer any questions; being legally married to Wade McClanahan, I am not compelled to answer.

Q. Was the McClanahan house searched on a search warrant on or about April 29, 1968? A. I decline to answer any questions; being legally married to Wade McClanahan, I'm not compelled to answer.

Q. Will you answer any question I ask you from now on? A. I decline to answer any questions; being legally married to Wade McClanahan, I'm not compelled to answer them.

Q. That completes the deposition; that's all the questions we have.

Witness Excused at 2:50 P.M.

[7] State of Louisiana:

Parish of East Baton Rouge:

I, Janet L. Parker, reporter within and for the Parish of East Baton Rouge, State of Louisiana, do hereby certify as follows:

That the witness, Mrs. Wade McClanahan, was duly sworn by Beatrice Lea, Deputy Clerk and ex-officio Notary Public in and for the Parish of Livingston, State of Louisiana, to testify to the truth, the whole truth and nothing but the truth, and that the foregoing deposition was taken by me and reduced to typewriting by me.

That the aforesaid deposition constitutes a true record of the testimony given by the witness.

That J. Minos Simon, Esq., 1408 Pinhook Road, Post Office Building 52116, OCS, Lafayette, Louisiana, represented the plaintiff; Ashton L. Stewart, Esq., Special Assistant Attorney General, 604 Union Federal Building, Baton Rouge, Louisiana, represented the defendants; Dennis R. Whalen, Esq., Attorneys Building, 300 Louisiana Avenue, Baton Rouge, Louisiana, and [8] William C. Bradley, Esq., 3022 Ray Weiland Drive, Baker, Louisiana, and G. Emmitt Core, Esq., 1926 Wooddale Boulevard, Baton Rouge, Louisiana, represented Wade McClanahan, Mrs. Imogene Coleman and Mrs. Wade McClanahan; and that each was present during the entire examination.

That the deposition was held in the Livingston Parish Courthouse, Livingston, Louisiana, on the 17th day of May, 1968, commencing at 2:47 P.M.

That I am not an attorney or counsel for any of the parties; nor am I a relative or an employed of any attorney or counsel connected with this action, nor am I financially interested in this action.

Baton Rouge, Louisiana, this 17th day of May, 1968.

JANET L. PARKER

Janet L. Parker

Reporter

Parish of East Baton Rouge

State of Louisiana

[3]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

Civil Action 68-38

RODERICK JENKINS

VS.

JOHN JULIAN McKEITHEN, ET AL

NOTICE FOR DEPOSITION

• • • •

TO:

J. Minos Simon, Esq.  
Simon Building  
1408 Pinhook Road  
Lafayette, Louisiana 70501  
Attorney for Plaintiff,  
Roderick Jenkins

Please take notice that the undersigned counsel for defendants proposes to take the deposition of Mr. George O. Wyatt, 5327 Cameron Boulevard, New Orleans, Louisiana, or c/o Bellmont Hotel, Baton Rouge, Louisiana, before an officer authorized to administer oaths under the laws of the State of Louisiana, in the Commissioner's Court Room, Third Floor, Civil Courts Building, New Orleans, Louisiana, at 10:00 o'clock A.M., Friday, May 31, 1968, or as soon thereafter as practicable.

Baton Rouge, Louisiana, May 23, 1968.

ASHTON L. STEWART

Ashton L. Stewart

*Trial Attorney*

604 Union Federal Building

Baton Rouge, Louisiana 70801

Telephone No. 342-4796

We hereby certify that we have this day mailed a copy of the above and foregoing notice to J. Mines Simon, Esq., Simon Building, 1408 Pinhook Road, Lafayette, Louisiana, attorney for plaintiff.

Baton Rouge, Louisiana, May 23, 1968.

ASHTON L. STEWART  
Aston L. Stewart  
Trial Attorney

[1]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

Civil Action 68-38

RODERICK JENKINS

vs.

JOHN JULIAN McKEITHEN, ET AL

PROCES-VERBAL

I, Leonard J. Bossier, Jr., an Official Court Reporter and Notary Public, duly commissioned, in and for the Parish of Orleans, State of Louisiana, do hereby certify that I did appear in the Commissioner's Court Room, Third Floor, Civil Courts Building, 421 Loyola Avenue, New Orleans, Louisiana, at 10:00 o'clock A.M., on Friday, May 31, 1968, for the taking of the deposition of Mr. George O. Wyatt, in the above entitled cause pursuant to the attached Notice;

That Mr. Ashton L. Stewart was present on behalf of all of the defendants in this cause;

That as of 10:30 A.M. Mr. George O. Wyatt, nor anyone representing him, had appeared, and I therefore called Mr. George O. Wyatt's name in the hall of the Civil District

Court, Parish of Orleans, State of Louisiana, and hearing [2] no response, whereupon I was discharged.

WITNESS my hand and official seal this 31st day of May, 1968.

LEONARD J. BOSSIER, JR.  
Leonard J. Bossier, Jr.  
Notary Public

[Filed May 31, 1968]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

**Motion To Vacate Plaintiff's Notice To Take Depositions of  
Mrs. Sybil Fullerton, et al.**

Defendants move to vacate the notice by plaintiff dated May 29, 1968, to take the depositions on June 6 and 7, 1968, of Mrs. Sybil Fullerton, Johnson Robinson, James M. Buford, Jr., General David Wade and Bill Sidney Simpson, on the following grounds:

1.

Inasmuch as this complaint attacks the constitutionality of a Louisiana Statute which created a Commission of Inquiry limited to investigating and reporting, the testimony in connection with the parole of a convict of the members of the State Parole Board, the Director of the Department of Institutions and of such paroled convict, here sought to be deposed, are irrelevant to the subject matter, will not lead to discovery of any admissible evidence, and will not affect the outcome of this action.

2.

Copies of news articles in the Baton Rouge State-Times of May 29, 1968, and May 30, 1968, with reference to the parole of said convict are annexed hereto, and which

articles defendants aver, on information and belief, are the sole source of plaintiff's information as to the testimony of said witnesses.

3.

Defendants aver, on information and belief, that the real purpose for plaintiff's said notice for depositions is to secure notoriety and publicity.

BY ATTORNEYS,

JACK P. F. GREMILLION  
*Attorney General of the  
 State of Louisiana*

ASHTON L. STEWART,  
*Special Assistant Attorney  
 General of the State of  
 Louisiana*

By /s/ ASHTON L. STEWART  
 Ashton L. Stewart,  
*Trial Attorney*  
 604 Union Federal Building  
 Baton Rouge, Louisiana 70801  
 Telephone No. 342-4796

*Attorneys for Defendants*

[Certificate of Service omitted]

May 31, 1968—

In accordance with prior orders of this court, all further proceedings in this case are hereby, once again STAYED, pending further orders from this court and accordingly, this motion to vacate plaintiff's notice to take depositions of Mrs. Sybil Fullerton, et al, is hereby GRANTED.

/s/ E. GORDON WEST  
*U. S. District Judge.*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

Notice of Motion

To: J. Minos Simon, Esq.  
Simon Building  
408 Pinhook Road  
Lafayette, Louisiana 70501  
Attorney for Plaintiff,  
Roderick Jenkins

Please take notice that the undersigned counsel for defendants will bring the motion to vacate plaintiff's notice to take depositions of Mrs. Sybil Fullerton, et als, filed May 29, 1968, in the captioned, on for a hearing before the Court, at ..... o'clock ...M. on the .... day of ....., 1968, or as soon thereafterwards as counsel can be heard.

Baton Rouge, Louisiana, May 31, 1968.

BY ATTORNEYS,

JACK P. F. GREMILLION  
*Attorney General of the  
State of Louisiana*

ASHTON L. STEWART  
*Special Assistant Attorney  
General of the State of Louisiana*

By /s/ ASHTON L. STEWART  
Ashton L. Stewart,  
*Trial Attorney*  
604 Union Federal Building  
Baton Rouge, Louisiana 70801  
Telephone No. 342-4796  
*Attorney for Defendants*

[Certificate of service omitted]

[Filed June 3, 1968]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

## Notice To Attorneys

To: J. Minos Simon, Esq.  
William C. Bradley, Esq.  
Dennis R. Whalen, Esq.  
Hon. Jack P. F. Gremillion  
Victor A. Sachse, Esq.  
Ashton L. Stewart, Esq.

Pursuant to instructions of the Honorable E. Gordon West and confirming telephone notice of June 3, 1968, please be advised that a hearing will be held in these consolidated cases on defendants' motion to dismiss at the U. S. Courthouse, 400 Royal St., New Orleans, La., Section "F", Room 221 on June 6, 1968, at 9:30 a.m.

A. DALLAM O'BRIEN, JR., Clerk  
By C. H. BANTA  
Deputy Clerk

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

Minute Entry: June 6, 1968

AINSWORTH, J.

WEST, J.

MITCHELL, J.

Civil Action No. 68-38

Civil Action No. 68-42

These cases came on for hearing this day on defendants' motion to dismiss.

PRESENT:

J. Minos Simon, Esq.  
Attorney for Roderick Jenkins

Dennis R. Whalen, Esq.  
Attorney for Jerry Sylvester

Ashton L. Stewart, Esq.  
Attorney for defendants

A waiver of the required five-day notice of this hearing to the Governor and Attorney General is filed by counsel for defendants.

The Court hears the arguments of counsel.

IT IS ORDERED that defendants' motion to dismiss be, and it is hereby, SUBMITTED.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

Minute Entry: June 7, 1968

WEST, J.

Civil Action No. 68-38

This cause came on for hearing this day on defendants' motion for an order to compel plaintiff to attend for deposition and for expenses and attorney's fee.

PRESENT:

Jack Yelverton, Esq.  
Attorney for defendants

Pending the determination by the three-judge court of defendants' motion to dismiss,

IT IS ORDERED that all other pending motions be, and they are hereby, DENIED, reserving to counsel the right to re-urge them.

• • • •  
J. Minos Simon, Esq.  
Ashton L. Stewart, Esq.

[Filed June 28, 1968]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

Civil Action Number 68-38

RODERICK JENKINS

VERSUS

JOHN JULIEN McKEITHEN, CECIL MORGAN, PAUL M. HERBERT,  
FLOYD C. BOSWELL, RALPH F. HOWE, A. R. JOHNSON, III,  
and BURT S. TURNER

Civil Action Number 68-42

JERRY SYLVESTER

VERSUS

CECIL MORGAN, THOMAS W. McFERRIN, and  
WILLIAM V. REDMANN

AINSWORTH, Circuit Judge, and WEST and MITCHELL,  
District Judges:

PER CURIAM:

These two suits, consolidated for hearing on motion to dismiss, attack the constitutionality of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967. This Act, LSA-R.S. 23:880.1-880.18, provides for the creation and operation of what is known as the Labor-Management Commission of Inquiry. Since injunctive relief is sought in both cases based upon the alleged unconstitutionality of said Act, this three-judge district court was convened pursuant to Title 28 U.S.C.A. 2281 and 2284. A hearing on the motions to dismiss was held on June 6, 1968, and after careful study of the voluminous records and exhaustive briefs of counsel, it is the opinion of this Court that the motions to dismiss must be granted.

The constitutionality of this Act has been challenged previously in the state courts of Louisiana in the case of *Martone v. Morgan*, 207 So.2d 770, wherein the plaintiff was represented by the same attorney now representing the plaintiff Jenkins. At the district court level, Mr. Martone prevailed, but that decision was reversed in a well-written opinion by Mr. Justice E. Howard McCaleb of the Louisiana Supreme Court. We agree with the unanimous opinion of the Louisiana Supreme Court in *Martone* that the case of *Hannah v. Larche*, 363 U.S. 420, 80 S. Ct. 1502, 46 L.Ed. 2d 1307, is dispositive of the issues pertaining to the constitutionality of the Act here in question. The Act was properly analyzed by the Louisiana Supreme Court in *Martone* when it said:

“The Legislature of 1967, by Act 2 of the Extraordinary Session thereof (R.S. 23:880.1-880.18) created a commission denominated as the ‘Labor-Management Commission of Inquiry’ to investigate and find facts relating to violations or possible violations of the criminal laws of this State or of the United States arising out of or in connection with matters in the field of labor-management relations. According to the preamble to the act, this Commission of Inquiry was conceived and created to examine the causes for the unprecedented conditions existing in the State in the field of labor-management relations under which, by reason of suspected violations of the State and Federal criminal laws, there has been a shutdown of construction work involving industrial development projects furnishing employment to thousands of persons; that the present conditions vitally affect the public interest and threaten to disrupt the conduct of normal labor-management relations. It was further stated that, in view of the presently existing conditions, the public interest requires that the causes thereof be investigated on a statewide basis as a supplement to assist activities of the district attorneys, grand juries and other law enforcement officials and agencies of this State and of the United States.

“The body of the act, the Commission is created and invested with power to ascertain the facts sur-

rounding and pertaining to any actual or possible violations of the criminal laws relating to, arising out of or connected with problems or disputes in the field of labor-management relations. This power was limited however, the act declaring, ' \* \* \* it shall be investigatory and fact finding only \* \* \* ', and it was further provided that 'The commission shall have no authority to and it shall make no binding adjudication with respect to such violation or violations; \* \* \* ' and 'No findings, conclusions, recommendations or reports of the commission may be used as *prima facie* or presumptive evidence of the guilt or innocence of any person in any court of law.' Additionally, the act provides that the Commission ' \* \* \* shall make and publicize its findings with respect to the question whether or not there is probable cause to believe that there are or have been violations of any criminal law \* \* \*. Copies of its report shall be immediately furnished to the governor, the lieutenant governor, the attorney-general and the legislature.'

"After the membership on the Commission had been duly appointed and the body began to function conformably with the authority vested in it, plaintiff instituted the present suit for an injunction as a taxpayer to have the statute declared unconstitutional on various grounds which will hereinafter be set forth and discussed. The principal attack levelled by the plaintiff is that the act denies him due process as guaranteed by Section 2 of Article I of the Louisiana Constitution and the Fourteenth Amendment to the Constitution of the United States, because the powers vested in the Commission are such that, in their investigations and hearings authorized under the act, plaintiff and/or persons similarly situated are denied assistance of counsel, the right of confrontation, the right of cross-examination of witnesses and the right to compulsory process for their witnesses. The provisions of the act thus assailed have to do with the procedure rules set forth in the act for hearings by the Commission.

\* \* \* \* \* we direct our immediate attention to plaintiff's principal attack, and the holding of the trial

judge, that R.S. 23:880.1-880.18 denies plaintiff and those similarly situated due process under the State and Federal Constitutions in that it is an agency \*\*\* which makes determinations in the nature of adjudications affecting legal rights. \*\*\* Its duty in large part is to find that named individuals are responsible for criminal actions and to *advertise* (publicize) such findings and serve as part of the process of criminal prosecution.'

"This ruling, in our opinion, does not conform with the nature of the statute and the purpose for its enactment, for the Labor-Management Commission of Inquiry is not invested with any power to make adjudications affecting legal rights. On the contrary it is, as its provisions expressly set forth, an administrative commission (R.S. 23:880.1) created for the special purpose of investigating and finding facts in relation to violation of existing criminal laws \*\*\* affecting in a significant manner labor-management relations in one or more areas of the state \*\*\* in various construction projects which may, in the opinion of the Governor, operate as a serious threat to the economic well-being of the affected area or the State as a whole (R.S. 23:880.5). By Section 880.6(A) it becomes the duty of the Commission, when called on by the Governor to, investigate and hold hearings, to receive testimony and documentary evidence and make findings with respect to any actual or probable violations of criminal laws which relate to the problems or disputes in the field of labor-management relations.

"Under the provisions of Section 880.7(A), the Commission is required to publicize its findings with respect to the question whether or not there is probable cause to believe that there have been violations of any criminal law arising out of the subject matter of its investigation. But it \*\*\* shall have no authority to and it shall make no binding adjudication with respect to such violation \*\*\*, however it may make such recommendations to the Governor for action as it deems appropriate, and copies of its report are to be furnished to the Governor, Lieutenant Governor, the Attorney General and the Legislature. Nevertheless its findings, recommendations and conclusions may

not be used as *prima facie* or presumptive evidence of guilt or innocence of any person in any court of law.

"It is seen from the foregoing that this administrative body has no right to adjudicate; it merely finds facts and recommends. Hence, it is difficult to perceive that these limited powers impinge upon any constitutional guarantee to which those being investigated are entitled under the Bill of Rights."

The Act here in question was obviously carefully drafted with *Hannah* in mind. Its provisions are carefully tailored along the lines of the statute creating the Commission on Civil Rights, 71 Stat. 634, 42 U.S.C. 1975-1975(e), 42 U.S.C.A. 1975-1975(e) which was at issue in *Hannah*, and we conclude that the holding there is completely dispositive of the constitutional question here involved. In *Hannah*, the court concluded:

"‘Due process’ is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts. Thus, when governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process. On the other hand, when governmental action does not partake of an adjudication, as for example, when a general fact finding investigation is being conducted, it is not necessary that the full panoply of judicial procedures be used. Therefore, as a generalization, it can be said that due process embodies the differing rules of fair play, which through the years, have become associated with differing types of proceedings. Whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding, are all considerations which must be taken into account. An analysis of these factors demonstrates why it is that the particular rights claimed by the respondents need not be conferred upon those appearing before

purely investigative agencies, of which the Commission on Civil Rights is one.

"It is probably sufficient merely to indicate that the rights claimed by respondents are normally associated only with adjudicatory proceedings, and that since the Commission does not adjudicate it need not be bound by adjudicatory procedures. Yet, the respondents contend and the court below implied, that such procedures are required since the Commission's proceedings might irreparably harm those being investigated by subjecting them to public opprobrium and scorn, the distinct likelihood of losing their jobs, and the possibility of criminal prosecutions. That any of these consequences will result is purely conjectural. There is nothing in the record to indicate that such will be the case or that past Commission hearings have had any harmful effects upon witnesses appearing before the Commission. However, even if such collateral consequences were to flow from the Commission's investigations, they would not be the result of any affirmative determinations made by the Commission, and they would not affect the legitimacy of the Commission's investigative functions." 80 S. Ct. at 1514.

The following quote from *Hannah* is especially applicable here:

"On the other hand, the investigative process could be completely disrupted if investigative hearings were transformed into trial-like proceedings, and if persons who might be indirectly affected by an investigation were given an absolute right to cross-examine every witness called to testify. Fact finding agencies without any power to adjudicate would be diverted from their legitimate duties and would be plagued by the injection of collateral issues that would make the investigation interminable. Even a person not called as a witness could demand the right to appear at the hearing, cross-examine any witness whose testimony or sworn affidavit allegedly defamed or incriminated him, and call an unlimited number of witnesses of his own selection. This type of proceeding would make a shambles of the investigation and stifle the agency in its gathering of facts." 80 S. Ct. at 1515.

The plaintiffs in the instant cases have not been called as witnesses before the Commission, and to allow them, along with the many others whom they claim to represent, to cross-examine witnesses and present evidence to the Commission would certainly "make a shambles of the investigation and stifle the agency in its gathering of facts." We need but to look at the lengthy pleadings filed herein by plaintiffs to conclude that the court in *Hannah* was right when it said that if investigative hearings were transformed into trial-like proceedings the fact finding agency would be "plagued by the injection of collateral issues that would make the investigation interminable." For example, the plaintiff Jenkins alleges, *inter alia*, that the Governor of the State of Louisiana, together with members of the Labor-Management Commission, including the Dean of Louisiana State University Law School, the Dean of the Tulane Law School, the president of a local bank, and others "have \* \* \* singled out for murder \* \* \* six members of Teamsters Local No. 5 of Baton Rouge, Louisiana." He further alleges that these same gentlemen are using their "great arsenal of power" "to destroy the current power structure of the labor union aforesaid" (Teamsters Local No. 5 headed by one Edward Grady Partin) "and to install a new power structure oriented and subservient to the James R. Hoffa group or clique of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. The plaintiff Jenkins then alleges that these same defendants have caused the arrest of the said Edward Grady Partin on a charge of aggravated assault and that their action "is but a response to the announcement of the candidacy of Honorable Robert F. Kennedy for the nomination for the presidency of the United States by the Democratic Party of the United States, in that the conspirators herein are hoping thereby to induce Edward Grady Partin to recant his testimony heretofore given against James R. Hoffa, to be used as a basis to obtain a new trial for and the consequent release from prison of

James R. Hoffa prior to the democratic presidential nomination, so as thereby to thwart the nomination of the said Robert F. Kennedy who, as Attorney General of the United States, ordered and managed the prosecution and conviction of the said James R. Hoffa."

These are but examples of the twenty-one pages of allegations contained in the complaint filed herein by Jenkins. These are the issues that plaintiffs would like to inject into Commission hearings, and these are the issues plaintiffs would like to air out in open court before this tribunal. The entire history of these proceedings convinces this Court that plaintiffs are far more interested in obtaining a forum in which to publicize their extraordinary allegations than in obtaining an adjudication of issues pertaining to the constitutionality of the Act involved. We decline to allow them to do so here.

A careful reading of the Act shows that plaintiffs' analysis thereof, as set forth in rather strained and extreme terms in the complaints filed herein, is simply not an accurate analysis of the powers, duties, and functions of the Commission created thereby. We conclude instead, that as stated in *Hannah*:

" \* \* \* the purely investigative nature of the Commission proceedings, the burden that the claimed rights would place upon those proceedings, and the traditional procedure of investigating agencies in general, leads us to conclude that the Commission rules of procedure comport with the requirements of due process." 80 S. Ct. at 1519.

While ordinarily it is only the question of the constitutionality of the state statute involved and whether or not injunctive relief in connection therewith should be granted that is before the three-judge court, nevertheless, where other issues are also involved, it is, to large extent, discretionary with the court as to whether or not such other issues will be resolved by the three-judge court. The test

is whether or not such issues as would ordinarily be heard by a single-judge court are so interrelated to the three-judge questions as to present one continuous transaction or set of operative facts. *Turner v. Goolsby*, 255 F. Supp. 724. In the instant case, in addition to alleging the unconstitutionality of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967, plaintiff in the Jenkins case also alleges that the various actions of the Commission alleged in his complaint, including those hereinabove quoted, constituted a violation of his civil rights under Title 42 U.S.C.A. 1981, 1983, and 1988. These allegations are so intertwined with the question of the constitutionality of the Act itself that they are proper claims to be considered by this Court.

After having determined that the Act itself is constitutional, and that the procedures adopted by the Commission do not do violence to plaintiffs' constitutional rights, we now conclude that plaintiffs have not stated a claim for relief under Title 42 U.S.C.A., §§ 1981, 1983, or 1988.

Reduced to essentials, the plaintiff, Jenkins, claims that he, who has not been called before the Labor-Management Commission of Inquiry, has nevertheless, as a result of hearings held by that Commission, been charged under four certain bills of information filed by the District Attorney of Iberville Parish, Louisiana, with criminal conspiracy to commit a battery with a dangerous weapon on four different people, all in violation of certain state statutes. He alleges that these charges are false and that he is not guilty. He alleges that he has not been tried as speedily as he would like, even though his own allegations certainly indicate no real violation of his constitutional right to a speedy trial. He alleges that these charges against him resulted from improper actions on the part of the Labor-Management Commission of Inquiry, and that there is no justification whatsoever for them having been filed against him. In other words, he alleges that he is not guilty.

The plaintiff Sylvester merely claims that continued hearings by the Commission while charges are pending against him in Iberville Parish, Louisiana, will make it impossible for him to obtain an impartial jury for the trial of his case, and hence he seeks to have this Court enjoin all further hearings by the Commission so long as these charges against him are pending.

All of these allegations of both plaintiffs are merely potential defenses to the criminal charges pending against them and may be urged if and when they are brought to trial on those charges. This Court must assume that the courts of Louisiana before whom plaintiffs' cases are pending will perform their duty and will see that the plaintiffs are given a fair and impartial trial and that all of their constitutional and statutory rights are respected. Unless and until the contrary is shown, the allegations made herein by these plaintiffs are premature, and do not state a claim upon which this Court could or should grant relief. As stated by the United States Supreme Court in *Stefanelli v. Minard*, 342 U.S. 117, 96 L. Ed. 138, 72 S. Ct. 118; concerning intervention of the federal courts in cases of this kind:

"If we were to sanction this intervention, we would expose every state criminal prosecution to insupportable disruption. Every question of procedural due process of law—with its far-flung and undefined range—would invite a flanking movement against the system of State courts by resort to the federal forum, with review if need be to this Court, to determine the issue. Asserted unconstitutionality in the impaneling and selection of the grand and petit juries, in the failure to appoint counsel, in the admission of a confession, *in the creation of an unfair trial atmosphere*, in the misconduct of the trial court—all would provide ready opportunities which conscientious counsel might be bound to employ, to subvert the orderly, effective prosecution of local crime in local courts. To suggest these difficulties is to recognize their solution." (Emphasis supplied.)

Plaintiffs argue that the teaching of *Dombrowski v. Pfister*, 380 U.S. 479, 14 L. Ed. 2d 22, 85 S. Ct. 1116, is controlling here. We disagree. None of the special circumstances noted in *Dombrowski* appear here. *Dombrowski* held that the statute there under attack operated on its face to abridge the plaintiff's First Amendment right of freedom of expression. The court there found that to force the plaintiff to wait and urge his defenses during his state court criminal trial would result in "a substantial loss or impairment of freedom of expression" in the meantime. Such is not the case here. *Dombrowski* is inapplicable.

In passing, it is noted that the plaintiffs attempt to bring these suits as "class actions," claiming to represent themselves "and all others similarly situated." Suffice it to say that the requirements of Rule 23 of the Federal Rules of Civil Procedure are obviously lacking in these cases, and thus this Court must necessarily conclude that these suits involve only the claims of the individual plaintiffs named herein, and that plaintiffs' attempt to make these actions "class actions" must fail.

For these reasons, defendants' motions to dismiss each of these cases will be granted, and a decree will be entered accordingly.

Baton Rouge, Louisiana, June 26, 1968.

/s/ ROBERT A. AINSWORTH, JR.  
Robert A. Ainsworth, Jr.,  
*Circuit Judge*

/s/ E. GORDON WEST  
E. Gordon West,  
*District Judge*

/s/ LANSING L. MITCHELL  
Lansing L. Mitchell,  
*District Judge*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

Civil Action No. 68-38

Civil Action No. 68-42

[Caption omitted]

**Judgment**

These consolidated cases came before a duly constituted three-judge court for a hearing on defendants' motions to dismiss, and the issues having been heard, the Court took time to consider. Now, in accordance with the per curiam opinion filed herein,

IT IS ORDERED AND ADJUDGED that judgment be entered herein in favor of defendants, John Julien McKeithen, Cecil Morgan, Paul M. Hebert, Floyd C. Boswell, Ralph F. Howe, A. R. Johnson, III, and Burt S. Turner, and against plaintiff, Roderick Jenkins, in Civil Action No. 68-38 and in favor of defendants, Cecil Morgan, Thomas W. McFerrin, and William V. Redmann, and against plaintiff, Jerry Sylvester, in Civil Action No. 68-42, dismissing plaintiffs' suits at their cost.

Baton Rouge, Louisiana, July 2, 1968.

/s/ ROBERT A. AINSWORTH, JR.  
*United States Circuit Judge*

/s/ E. GORDON WEST  
*United States District Judge*

/s/ LANSING L. MITCHELL  
*United States District Judge*

[Filed July 11, 1968]

**Designation of Record**

**To: MR. A. DALLAM O'BRIEN, CLERK**  
United States District Court  
Eastern District of Louisiana  
New Orleans, Louisiana

**ATTENTION: MR. C. H. BANTA, DEPUTY CLERK**  
BATON ROUGE DIVISION

Plaintiff hereby designates for inclusion in the record on appeal the following:

1. All the pleadings filed by the parties litigant.
2. All affidavits and supporting documents filed by the plaintiff in the captioned matter.
3. All minute entries that will disclose all the orders and judgments of the court in connection with the captioned matter.
4. The reasons for and judgment appealed from.
5. Notice of appeal and designation of record on appeal.

**J. MINOS SIMON**  
1408 Pinhook Road  
Post Office Box 52116, OCS  
Lafayette, Louisiana

*/s/ J. MINOS SIMON*  
*Attorney for Plaintiff*

[Filed July 11, 1968]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

**Request for Certification and Transmission of Record on Appeal**

RODERICK JENKINS, appearing through counsel, respectfully, requests that Honorable A. Dallam O'Brien, Clerk, United States District Court, Eastern District of Louisiana, do certify the record in this cause and make provision for its transmission to the United States Supreme Court pursuant to the rules of that Court.

Lafayette, Louisiana, this 3d day of July, 1968.

J. MINOS SIMON  
1408 Pinhook Road  
Post Office Box 52116, OCS  
Lafayette, Louisiana

/s/ J. MINOS SIMON  
*Attorney for Plaintiff*

[Certificate of Service Omitted]

[Filed July 11, 1968]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

[Caption omitted]

**Notice of Appeal**

To: **MR. ASHTON L. STEWART, ESQUIRE**  
Attorney at Law  
604 Union Federal Building  
Baton Rouge, Louisiana  
*Attorney for Defendants*

PLEASE TAKE NOTICE that Roderick Jenkins, plaintiff in the captioned proceeding, hereby appeals to the Supreme Court of the United States from the judgment of the United States District Court rendered in connection with the captioned matter on June 28, 1968, whereby plaintiff's lawsuit for injunctive relief was dismissed.

This appeal is taken under the provisions of Title 28, United States Code, Section 1253.

Lafayette, Louisiana, this 2nd day of July, 1968.

**J. MINOS SIMON**  
1408 Pinhook Road  
Post Office Box 52116, OCS  
Lafayette, Louisiana

/s/ **J. MINOS SIMON**  
*Attorney for Plaintiff*

[Certificate of Service Omitted]

**Act No. 2 of the First Extraordinary Session of the Louisiana  
Legislature for 1967 (LSA-R.S. 23:880.1—880.18)**

**AN ACT**

To amend Chapter 8 of Title 23 of the Louisiana Revised Statutes of 1950, to add thereto a new Part, to be designated as Part III-A thereof and containing R.S. 23:880.1 through R.S. 23:880.18, both inclusive to create the **Labor-Management Commission of Inquiry**; to provide with respect to its composition, selection and other matters relating to the organization and functioning thereof; to fix the powers, duties and functions of said commission in connection with the investigation and findings of facts relating to violations or possible violations of criminal laws of the state of Louisiana or of the United States arising out of or in connection with matters in the field of labor-management relations, including the exercise of the subpoena power; the authority to take depositions; to authorize the commission to hold executive and public hearings; to provide with respect to the rights, privileges, duties and immunities of witnesses; to define certain misdemeanors and fix penalties therefore; to provide with respect to contempt committed before the commission or in connection with its process; to require cooperation with the commission by all public officials, boards, commissions, departments and agencies of the state and all political subdivisions thereof; to otherwise provide with respect to matters pertaining to the purposes for which said commission is created, and to appropriate the sum of Two Hundred and Fifty Thousand (\$250,000.00) Dollars, or so much thereof as may be necessary, out of the General Fund of the state of Louisiana for the fiscal year 1967-68 to the **Labor-Management Commission of Inquiry**, to be used by it for operations in connection with the purposes for which it is created.

**WHEREAS**, unprecedented conditions presently exist in the state under which there has been a shut-down of construction work involving industrial development projects,

giving employment to thousands of persons and vitally affecting the public interest and threatening the orderly conduct of normal labor-management relations; and

WHEREAS, in connection with the conditions above referred to there have been allegations and accusations of violations of the state and federal criminal laws which should be thoroughly investigated in the public interest; and

WHEREAS, in order to supplement and assist the efforts and activities of the several district attorneys, grand juries and other law enforcement officials and agencies of the State of Louisiana and of the United States, it is imperative that additional investigative facilities on a state-wide basis be made available; and

WHEREAS, it is essential that immediate action be taken to empower the Governor in this existing situation and in any similar emergencies that may arise in the future promptly to initiate action by which the facts causing or contributing to such conditions may be investigated and other appropriate action taken when such investigation indicates probable violations of state or federal criminal laws. Now, therefore

Be it enacted by the Legislature of Louisiana:

Section 1. Part III-A of Chapter 8 of Title 23 of the Louisiana Revised Statutes of 1950, comprising R.S. 23:880.1 through R.S. 23:880.18, both inclusive, is hereby enacted to read as follows:

**PART III-A. LABOR-MANAGEMENT  
COMMISSION OF INQUIRY**

**§ 880.1 Labor-Management Commission of Inquiry; creation, vacancies, domicile**

The Labor-Management Commission of Inquiry is created as a permanent commission, administratively, with the powers of inquiry hereinafter set forth only to be exer-

cised on an ad hoc basis as hereinafter provided. The commission shall be composed of nine members who shall be appointed by the governor and who shall serve at the pleasure of the governor. Three of the members shall be appointed from among the representatives of organized labor in Louisiana, three from industry located within Louisiana and three shall be Louisiana residents and representatives of the public generally. Any vacancy for any cause shall be filled by appointment by the governor in the same manner as above stated. Any temporary vacancy, including recusation of any member in any investigation, may be filled by the governor on an ad hoc basis.

The domicile of the commission shall be in the city of Baton Rouge, but meetings may be held at any place within the state.

#### § 880.2 Officers of commission; secretary

The governor shall designate the chairman and vice-chairman, who shall be members of the commission. The governor's executive counsel shall serve as secretary to the commission and shall be the official custodian of all records of the commission, and in proper cases shall authenticate and certify to the accuracy thereof. He shall perform such other functions as are assigned by the commission.

#### § 880.3 Compensation of members

The members of the commission shall receive no salary but each shall be paid a per diem of fifty dollars for each day of actual attendance at meetings of the commission and shall be paid at the rate of ten cents per mile for travel expenses incurred while on business for the commission.

#### § 880.4 Quorum; vote necessary for actions

A majority of the members of the commission shall constitute a quorum. The affirmative vote of five members

of the commission shall be necessary for the commission to take any action.

**§ 880.5. Referral of matters to commission by governor**

Whenever, in the opinion of the governor, there is serious and substantial indication or there are widespread allegations that there is or may be widespread or continuing violations of existing criminal laws of the United States or of the state of Louisiana affecting in a significant manner labor-management relations in one or more areas of the state and that, as a result thereof, there exists a serious threat to the economic well-being of the affected area or the state as a whole, he may refer the matter to the commission in writing for such action as it is hereinafter authorized to take.

**§ 880.6. Public hearings, jurisdiction of commission**

A. Whenever the governor refers any matter to the commission, it shall, as expeditiously as practicable, investigate and hold hearings at which it shall receive testimony and documentary evidence, or either of them, and it shall ascertain the facts surrounding or pertaining to and shall make findings with respect to any actual or probable violations of the criminal laws of this state or of the United States which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations. The power, authority or jurisdiction of the commission in the conduct of any investigation and also during the course of any executive session or public hearing held by it shall be investigatory and fact finding only and shall be limited to matters which have been referred to it by the governor and which are or may be violations of the criminal laws of the United States or of this state which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations.

B. The commission shall have no power, authority or jurisdiction to investigate, hold hearings or seek to ascer-

tain the facts or make any reports or recommendations on any of the strictly civil aspects of any labor problem or dispute, but inquiry into alleged criminal acts shall not be improper because recital thereof may reflect upon some civil aspects thereof, and its power, authority or jurisdiction shall in no case extend to (1) any matters which is solely an "unfair labor practice" or an "unfair employment practice" or a legitimate labor dispute under the provisions of any federal or state law; or (2) any matter which relates to legitimate economic issues arising between labor and management or the manner in which such labor practices or economic issues are to be settled between the parties, whether by negotiation, arbitration, lockout or strike; or (3) any matter which relates solely to the internal affairs of labor organizations, including but not necessarily restricted to membership policies, election procedures, membership rights and like matters; or (4) any alleged acts of violence or threats of violence or so-called "mass picketing," or like conduct by either an employer or a union, which is not related to bribery or extortion, as defined by law, but which is related only to an organizational objective of a labor union or which is related only to furthering the interests of one side or the other in a "labor dispute," as that term is defined by federal or state law, such conduct being already regulated by and subject to the police power of the state, exercised through such agencies as the Division of State Police; or (5) any matter which relates solely to the internal affairs of any business organization, including but not necessarily restricted to its labor and business policy and general operations; or (6) any matters which constitute a combination of any two or more of these. In addition, the commission shall have no power, authority or jurisdiction to file, intervene in or in any manner participate in any civil judicial proceedings, except for the purpose of seeking the enforcement of a subpoena issued by it in accordance with the provisions of this Part, or except for the institution of

contempt proceedings as provided in this Part or except when the commission has been made a defendant in any civil suit.

C. Upon the request of the governor, the commission may assign all or part of its investigatory forces to the State Police to assist them in investigating any violations or probable violations of law and in apprehending all persons engaged in violation of law. During such assignment such investigators shall be under the supervision of the Director of the Department of Public Safety and have all the power and authority of other members of the State Police.

D. All public officials, personnel, employees and agents of all boards, commissions, departments and agencies of the state and of the political subdivisions of the state shall cooperate fully with the commission, to the end that it may effectively and comprehensively carry out its functions and duties.

§ 880.7. Findings; recommendations to governor; criminal charges; interim reports

A. Upon the completion of its investigations and after public hearing the commission shall make and publicize its findings with respect to the question whether or not there is probable cause to believe that there are or have been violations of any criminal law or laws of the United States or of the state of Louisiana arising out of or in connection with or as a result of the matter which is the subject of the investigation. The commission shall have no authority to and it shall make no binding adjudication with respect to such violation or violations; however, it may, in its discretion, include in its findings the conclusions of the commission as to specific individuals or as to the general situation, or as to both, and it may make such recommendations for action to the governor as it deems appropriate. Copies of its report shall be immediately furnished to the governor, the lieutenant governor, the attorney-general and

the legislature. No findings, conclusions, recommendations or reports of the commission may be used as *prima facie* or presumptive evidence of the guilt or innocence of any person in any court of law.

B. If the commission finds that there is probable cause to believe that there has been a violation of any criminal law of the United States or of this state and that such violation arises out of or in connection with or as a result of a problem or dispute in the field of labor-management relations, it shall report its findings and recommendations to the proper federal and state authorities, or either of them, charged with the responsibility for prosecution of criminal offenses. In addition, when directed to do so by the commission, the chairman shall file appropriate charges with the state and federal authorities having jurisdiction.

C. The commission shall make interim reports of its findings to the governor at such times as the commission or the governor may deem desirable.

D. With respect to any of its findings, the commission may request the governor to refer the matter to the attorney general asking that he exercise the full authority conferred by Article VII, Section 56 of the Constitution in causing criminal prosecutions to be initiated in accordance with law.

#### § 880.8. Powers of commission

In order to carry out the functions vested in it the commission may:

(1) Adopt, amend, publish and enforce such rules and regulations, not inconsistent with the provisions of this Part, as it deems necessary to fully effectuate the purposes for which it is created.

(2) Employ and fix the duties and compensation of such attorneys, investigators, staff personnel and other persons and make such other expenditures as it finds necessary to

accomplish the purposes of this Part; provided that all salaries and compensation fixed by the commission shall be approved by the governor.

(3) Administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation and require the production of books, records, documents or other evidence deemed relevant or material to any executive session or public hearing held or deposition taken by the commission, but only at such executive session, public hearing or at the time of taking the deposition. The power herein granted to issue subpoenas and compel attendance of witnesses and the production of books, records, documents or other evidence shall be exercised in accordance with the provisions of Section 880.9 of this Part.

(4) Order testimony to be taken by deposition in cases where the commission determines that a witness is incapacitated, and by virtue thereof, unable to attend the hearing or to appear in person before the commission during the course of an executive session or a public hearing, or is outside the boundaries of the state of Louisiana. Such depositions may be taken before any person designated by the commission who is authorized to administer oaths. Unless otherwise ordered by the commission, such depositions shall be filed at the public hearing and be made part of the record. Testimony by deposition may be taken within or without the state. If taken within the state subpoena may issue from the commission compelling attendance and production of records. If taken without the state, the commission may apply to the district court having jurisdiction over the area where the commission is holding an executive session or public hearing, or to the district court in and for the parish of East Baton Rouge, for an order directing the taking of the deposition, in the manner provided by law for the taking of foreign depositions in judicial proceedings.

Testimony taken by deposition shall be reduced to writing by the person taking the deposition, or under his direction, and shall be subscribed by the deponent.

(5) Do and perform any other things necessary to accomplish the purposes for which it is created.

§ 880.9. Service of subpoenas; returns; failure to comply; contempt of commission.

A. Subpoenas issued under authority of Paragraph (3) of Section 880.8 of this Part shall be served by domiciliary or personal service and may be served by any sheriff, deputy sheriff or employee designated by the commission. Domiciliary service shall be made by leaving the subpoena at the dwelling house or usual abode of the witness, with a person of suitable age and discretion residing therein as a member of the domiciliary establishment of the witness, or at any place where the business of the witness is regularly conducted, with a person of suitable age and discretion there employed. Subpoenas for the production of documents shall be served in a similar manner. The person making the service of any subpoena shall make a return thereon, setting forth the date, place, type of service and sufficient other data to show service in compliance with this Section. The return shall be signed and promptly returned to the commission.

B. (1) In the event any person fails or refuses to obey a subpoena issued in accordance with the provisions of this Part, the commission may present its petition to any state district court within the jurisdiction of which the hearing is held or within the jurisdiction of which the person is found or resides or has his principal place of business, setting forth the facts. The court then shall have the power to compel such person to appear before the commission and give testimony or produce evidence as ordered. Any failure to obey such an order of the court may be pun-

ished by the court issuing the same as a contempt thereof. In addition, if any person commits any act which is contemptuous of any authority vested in the commission or of any procedure taken by the commission in conformity with the powers vested in it by the provisions of this Part, the commission may present its petition, setting forth the facts, to any state district court within the jurisdiction of which the hearing is held or within the jurisdiction of which the person is found or resides or has his principal place of business. Upon a finding guilt, such person shall be adjudged in contempt of the commission and shall be punished by the court as a contempt of court.

(2) Contempt of the commission shall include but shall not be limited to any of the following acts:

(a) Contumacious failure to comply with a subpoena to appear before the commission, proof of service of which appears of record;

(b) Contumacious violation of an order excluding or separating a witness;

(c) Refusal to take the oath or affirmation as a witness, or refusal of a witness to answer a relevant question when ordered to do so by the commission, or refusal to answer any other question when granted the immunity conferred by Section 880.13 of this Part.

(d) Contumacious, insolvent or disorderly behavior toward the commission, any member thereof or its attorney during the course of any executive session or public hearing, which tends to interrupt or interfere with the business of the commission or to impair its dignity or respect for its authority;

(e) Breach of the peace, boisterous conduct or violent disturbance tending to interrupt or interfere with the busi-

ness of the commission or to impair its dignity or respect for its authority;

(f) Use of insulting, abusive or discourteous language by an attorney or other person at any hearing or in a document filed with the commission.

C. The chairman or other presiding officer may punish breaches of order or of decorum by censure or by exclusion from the hearing, or by both.

§ 880.10. Rights of witnesses; right to counsel

A. No person may be required to appear or to testify at any executive session or public hearing held by the commission or give a deposition unless a copy of this Part and a general statement of the subject of the investigation has been served upon him prior to the time when he is required to appear or to give a deposition.

Provided, however, that in the event a witness objects to a question or a series thereof or to the subpoena on the ground that he has not been given sufficient information as to the subject of the investigation, such objection shall be submitted to the commission, and in the event that the commission determines that the objection has merit, the commission shall inform the witness adequately as to the purpose of the investigation and shall afford the witness reasonable additional time within which to prepare for the hearing. If the commission determines by majority vote that the objection is without merit, such ruling shall be final, and the witness shall be ordered to answer the questions of the commission or to comply with the subpoena. If the witness fails or refuses to comply with the order of the commission or fails or refuses to comply with the order of the commission after the lapse of such additional time as the commission may have granted him within which to comply after further advising him of the nature of the inquiry, the commission shall exercise its powers set forth in Section 880.9 of this Part.

B. A witness summoned to appear before the commission shall have the right to be accompanied by counsel, who may advise him of his rights, subject to such reasonable limitations as the commission may impose in order to prevent obstruction of or interference with the orderly conduct of the hearing. Counsel for any witness who testifies at an executive session or at a public hearing may question the witness he accompanies concerning relevant matters. In no event shall counsel for any witness have any right to examine or cross-examine any other witness but he may submit to the commission proposed questions to be asked of any other witness appearing before the commission, and the commission shall ask the witness such of the questions as it deems to be appropriate to its inquiry.

#### § 880.11. Witness fees

Witnesses summoned to appear before the commission shall be paid the same fees and mileage as are allowed by law for witnesses in criminal cases.

#### § 880.12. Evidence and testimony at executive and public sessions; protection of witnesses; penalties

A. The commission shall base its findings and reports only upon evidence and testimony given at public hearings. Prior to and at any time during or subsequent to the conduct of a public hearing the commission may go into executive session. It shall go into executive session upon the request of any member of the commission who states that in his opinion evidence or testimony being given or to be given at a public hearing may tend to degrade, defame or incriminate any person. In such executive session it shall afford the person who might be degraded, defamed or incriminated an opportunity to appear and be heard in the executive session, with a reasonable number of additional witnesses in his behalf requested by him, before deciding to receive such evidence or testimony in public hearing. If the commission should decide that such evidence or testi-

mony should be heard in a public hearing, the eviednce must be offered and filed anew in the public hearing and the testimony of the witness must actually be given at the public hearing, both without reference to the fact that the commission previously had viewed the evidence in executive session or heard the same or other testimony of the witness in executive session.

Should the commission determine to receive such evidence or testimony in public hearing, the person who might be degraded, defamed or incriminated thereby shall be given an opportunity at the public hearing to appear as a voluntary witness, or to file a sworn statement in his own behalf and submit brief, pertinent, sworn statements of others, or to submit to the commission a list of such persons as he may wish to have subpoenaed as additional witnesses. The actual issuance of any additional subpoenas shall be in the discretion of the commission.

B. It shall be a misdemeanor for any member of the commission, its counsel or employees, to make public any evidence or testimony taken at a private investigation or at any executive session. Whoever violates this Subsection shall be fined not more than one thousand dollars or be imprisoned for not more than one year, or both.

C. Any person whose name is mentioned or who is specifically identified and who believes that testimony or other evidence given at a public hearing or comment made by any member of the commission or its counsel at such a hearing tends to defame him or otherwise adversely affect his reputation shall have the right either to appear personally before the commission and testify in his own behalf as to matters relevant to the testimony or other evidence complained of or, in the alternative at the option of the commission, to file a statement of facts under oath relating solely to matters relevant to the testimony or other evidence complained of, which statement shall be incorporated in the record of the investigatory proceeding.

### § 880.13. Immunity of witnesses

Whenever in the judgment of the commission the testimony of any witness, or deposition thereof, or the production of books, papers or other evidence by any witness, in any matter pending before it, is necessary to the public interest and the proper discharge by the commission of its duties imposed by this Part, the commission may make application to the district court having jurisdiction over the place where the hearing is being held, or to the district court in and for the parish of East Baton Rouge, requesting that the witness be instructed to testify, depose or produce evidence subject to the provisions of this Part, and upon order of the court such witness shall not be excused from testifying or depositing, or from producing books, papers or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no such witness so ordered by the court shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify, depose or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding against him in any court except for a prosecution for perjury or contempt committed while giving testimony, or while deposing or producing evidence under compulsion as provided herein.

### § 880.14. Misdemeanors and penalties

Whoever:

- (1) Uses or attempts to use violence, force or threats, with the intent to influence the testimony or conduct of any witness or person about to be called as a witness at any hearing before the commission, whether in executive session or a public hearing, or in connection with any investigation ordered by the commission; or

(2) Uses or attempts to use violence, force or threats to the person, his family, or property of any witness on account of his having attended any session or hearing or investigation, or on account of his testifying or having testified with respect to any pending matter; or

(3) With intent to avoid, evade, prevent or obstruct compliance, wholly or partially, with any subpoena issued by the commission, removes from any place, conceals, destroys, mutilates, alters or by any means falsifies any documentary material subject to such subpoena; or

(4) By force or threats, or by wilful acts prevents, obstructs, impedes or interferes with, or attempts to prevent, obstruct, impede or interfere with the due exercise of rights or the performance by the commission of its duties as imposed by this Part shall be guilty of a misdemeanor and upon conviction shall be fined not more than two thousand dollars or be imprisoned for not more than two years, or both.

#### § 880.15. Records of hearings

A. A complete and accurate record shall be kept of each public hearing, and any witness shall be entitled to a copy of his testimony at such hearing, at his own expense.

B. The records of any public hearing held by the commission, when properly authenticated and attested by the secretary of the commission, are public records and shall be subject to the provisions of Chapter 1 of Title 44 of the Louisiana Revised Statutes of 1950, as amended.

#### § 880.16. Immunity of commission members and employees

No action, proceeding or decision of the commission, or any of its members or employees in the exercise of its duties, functions and obligations in conformity with the provisions of this Part, shall subject any member or em-

ployee thereof to any suit or liability for damages in connection therewith.

#### § 880.17. Budget unit of state; reversion of funds

The commission shall be a separate budget unit of this state, as defined by law, and as such shall be subject to the provisions of Title 39 of the Louisiana Revised Statutes of 1950, as amended, and all other laws relating or applicable to budget units. Any funds appropriated to the commission which remain unexpended and unencumbered at the close of any fiscal year shall be remitted to the state general fund in accordance with law.

#### § 880.18. Liberal construction; exclusion from Administrative Procedure Act

The provisions of this Part shall be liberally construed to effectuate the purpose for which it was enacted. The provisions of Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950, as amended, shall not apply to the Labor-Management Commission of Inquiry.

Section 2. The sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars, or so much thereof as may be necessary, is hereby appropriated out of the General Fund of the state of Louisiana for the fiscal year 1967-1968 to the Labor-Management Commission of Inquiry, to be used by said Commission for operations in connection with the purposes for which it is created.

Section 3. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not effect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

Section 4. All laws or parts of laws in conflict herewith are hereby repealed.

Section 5. The necessity for the immediate passage of this Act having been certified by the governor to the legislature while in session, in accordance with Section 27 of Article III of the Constitution of Louisiana, this Act shall become effective immediately upon approval by the governor.

/s/ VAIL M. DELONY

Speaker of the House of  
Representatives

/s/ C. T. Aycock

Lieutenant Governor and  
President of the Senate

/s/ JOHN J. McKEITHEN

Governor of the  
State of Louisiana

APPROVED: July 22, 1967, at 10:52 A.M.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1968

NO.

RODERICK JENKINS,

Appellant

versus

JOHN JULIEN McKEITHEN, ET AL.,

Appellees

On Appeal from the United States District Court,  
Eastern District of Louisiana

**STATEMENT AS TO JURISDICTION**

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The appellant, pursuant to United States Supreme Court Rules 13(2) and 15, files this statement of the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the judgment of the United States District Court, in dismissing appellant's petition, and should exercise such jurisdiction in this case.

**OPINION BELOW**

The reasons for judgment were assigned on June 26, 1968, and a formal judgment was signed on July 2, 1968. A copy of the opinion is annexed hereto as Appendix A, *infra*, pages A-1-A-14. This decision has not been reported.

## JURISDICTION

This appeal is from a judgment entered by a three-judge United States District Court, dismissing appellant's lawsuit which prayed for the convening of a statutory three-judge district court and for interlocutory and permanent injunctions against the enforcement of Act. No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967. Because this state statute is lengthy its text is reproduced and attached hereto as Appendix B, *infra*, pages B-1-B-18. It is reported in West's Louisiana Revised Statutes Annotated, Volume 16, page 9 of the 1967 Cumulative Annual Pocket Part, officially cited as R.S. 23:880.1-880.18. Appellant's petition alleges that the statute as a matter of law and as administered denies him privileges and immunities as a citizen of the United States, due process and equal protection of the laws, guaranteed by the Fourteenth Amendment to the United States Constitution.

This court has jurisdiction on direct appeal to review said judgment under Title 28, United States Code, Section 1253, and Section 2101(c), and the following decisions sustain that jurisdiction: *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 71 S.Ct. 624; *Greene v. McElroy* (1959), 360 U.S. 474, 79 S.Ct. 1400; *Morgan v. United States*, 304 U.S. 1, 58 S.Ct. 773; *Cooper, et al. v. Aaron, et al.*, 358 U.S. 1, 78 S.Ct. 1401; *State of Missouri, ex rel. Gaines v. Canada, et al.*, 305 U.S. 337, 59 S.Ct. 232; *Beauharnais v. People of the State of Illinois*, 343 U.S. 250, 72 S.Ct. 725; *N.A.A.C.P. v. Button, et al.*, 371 U.S. 415, 83 S.Ct. 328; *Saunders v. Shaw*, 244 U.S. 317, 37 S.Ct. 638; *United States v. Morton Salt*, 338 U.S. 632 (1950);

*Elkins v. United States*, 364 U.S. 206 (1960); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Escobedo v. Illinois*, 378 U.S. 478 (1964); *Miranda v. Arizona*, 384 U.S. 436 (1966); *Mapp v. Ohio*, 378 U.S. 1 (1961); Cf. *Rogers v. United States*, 346 U.S. 367 (1951); *Malloy v. Hogan*, 378 U.S. 1 (1964); *O'Connell v. United States*, 140 F.2d 201 (2d Cir. 1930); *Shushan v. United States*, 117 F.2d 110 (1941); *Cooper, et al. v. Aaron, et al.* (1958), 358 U.S. 1, 78 S.Ct. 1401; *State of Missouri, ex rel., Gaines v. Canada, et al.* (1938), 305 U.S. 337, 59 S.Ct. 232; *Monroe v. Pape*, 81 S.Ct. 473; *United States v. Classic*, 313 U.S. 299, 61 S.Ct. 1031; *Pyle v. Kansas*, 317 U.S. 213, 63 S.Ct. 177; *Hague v. CIO*, 307 U.S. 496, 59 S.Ct. 954; *Birnbaum v. Trussell*, 371 F.2d 672; *Basista v. Weir*, 340 F.2d 74; *Nesmith v. Alford*, 318 F.2d 110; *Cohen v. Norris*, 300 F.2d 24; *Hughes v. Noble*, 395 F.2d 495; *Brazier v. Cherry*, 293 F.2d 400; *Coleman v. Johnson*, 247 F.2d 273; *United States, ex. rel., Potts v. Rabb*, 141 F.2d 45; *Valle v. Stingel*, 176 F.2d 697; *Cancino v. Sanchez*, 379 F.2d 808; *Jenks v. Henys*, 378 F.2d 335; *Brown v. Brown*, 368 F.2d 992; *Morgan v. Labiak*, 368 F.2d 338; *DeWitt v. Pail*, 366 F.2d 682; *Smith v. Hampton Training School for Nurses*, 360 F.2d 577; *Rivers v. Royster*, 360 F.2d 592; *Birnbaum v. Trussell*, 371 F.2d 692; *Hoffman v. Halden*, 268 F.2d 280; *Lewis v. Brautigan*, 227 F.2d 124, 55 A.L.R.2d 505 (5 Cir. 1955); *Scolnick v. Winston*, 219 F.Supp. 836, 842 (S.D. N.Y. 1963); *Egan v. City of Aurora*, 291 F.2d 706, 708 (7 Cir. 1961); *Jennings v. Nester*, 217 F.2d 153, 154 (7 Cir. 1954).

## **QUESTIONS PRESENTED**

1. Is a state statute valid, which by its terms creates an executive trial agency, whose sole function is to conduct public hearings for the purpose of making "findings" (a) that state or federal crimes have been committed, and (b) that named individuals are guilty of the commission of such crimes; which "findings" must be "publicized," as part of a criminal process, where persons suspected or called as witnesses are denied (1) the right to examine or cross-examine any witness who may testify for or against him, (2) the right to the effective assistance of counsel (3) the right of confrontation, (4) the right to compulsory process for the attendance of witnesses, (5) the right to effective and meaningful rules of evidence, (6) the right to meaningful and definable standards of guilt or innocence and (7) the right of appeal?

2. Do the acts and deeds of state officials in willfully applying the provisions of said state statute in a discriminatory manner against appellant and members of a labor union, for the sole purpose of destroying said labor union and discrediting its members, deprive appellant and those similarly situated of constitutional due process and equal protection of laws guaranteed by the Fourteenth Amendment to the United States Constitution, and of freedom of speech and association guaranteed by the First Amendment of the United States Constitution?

## **STATEMENT OF THE CASE**

The legal issues on this appeal are framed by the

pleadings of appellant's lawsuit. In his lawsuit appellant charges that the state statute in controversy, as a matter of law and as administered, deprives him of privileges and immunities as a citizen of the United States, of due process and equal protection of laws, guaranteed by the Fourteenth Amendment to the United States Constitution. The burden of his complaint is that the state statute creates an executive trial agency, known as the Labor-Management Commission of Inquiry. Its sole function is to conduct public hearings in the field of labor-management relations for the purpose of making "findings" concerning the existence of state or federal crimes and to identify the individuals who are guilty of the commission of such crimes. Under the terms of said statute these "findings" of guilt of law violations must be publicized. After this state agency has found named persons guilty of having committed crimes, and after such "findings" have been duly "publicized," it then becomes the mandatory duty of said state agency to "report its findings and recommendations to the proper federal and state authorities, or either of them, charged with the responsibility for prosecution of criminal offenses." In addition, when directed to do so by the Commission, "the Chairman shall file appropriate charges with the state and federal authorities having jurisdiction." Section 880.7(b). Thus the public hearing, the findings of guilt, and the publicizing of these findings are part of the criminal process.

Appellant further charges in his petition that a person subpoenaed before this trial agency as a potential accused or as a witness is denied the right to the effective assistance of counsel, to examine and cross-examine the witnesses

against him, to compulsory process for the attendance of witnesses in his behalf, to the benefit of effective and meaningful rules of evidence and to the benefit of meaningful and definable standards of guilt or innocence. Thus he is denied the rudiments of constitutional due process and equal protection of laws.

Appellant further charges in his lawsuit that the named defendants, their agents, representatives and employees and those acting in concert with them, in connection with the administration of this State Act have singled out appellant and members of Teamsters Local Union No. 5 as a special class of persons for repressive and willful and punitive action, solely because they are members of said labor union for the purpose of destroying said labor union. The complaint further establishes that the conspiracy alleged includes actions of state officials of willfully scandalizing members of said labor union, of knowingly filing false criminal charges against members of said labor union and of exacting excessive bail bonds in connection with such false charges, of intimidating other public officials into carrying out such tyrannical aims and of otherwise bringing to bear the entire police power of the state in furtherance of the conspiracy. By supplemental complaint it is alleged, inter alia, that officials of this state agency have singled out certain officials of said labor union for murder and this charge is supported by an affidavit of a former undercover agent of said state agency.

Based upon these substantial averments appellant prayed for injunctive relief. His application for a hearing as to his request for interlocutory injunction was refused. Instead,

the three-judge district court conducted a hearing only as to defendants' motion to dismiss. After oral argument of counsel the statutory three-judge district court maintained defendants' motion and summarily dismissed appellant's lawsuit.

On July 2, 1968, appellant gave notice of his appeal to this court.

***THE QUESTIONS PRESENTED ARE  
SUBSTANTIAL***

The offensive nature and overreaching quality of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967 (R.S. 23:880.1 — 880.18) can be accurately appraised only if the nature and function of the Commission of Inquiry which it creates are subjected to close scrutiny. The structure of its power is a good beginning point.

The Commission of Inquiry is an executive trial agency. Its powers of inquiry are to be exercised only on an ad hoc basis, Section 880.1, and then only when, in the opinion of the Governor alone, that power should be exercised. Section 880.5. Thus, the reins of control are vested exclusively in the already powerful hands of the Governor of the State of Louisiana and the standards of judgment by which he is to be guided in unleashing the consummate power of depredation inherent in the Commission are so vague and indefinite as to offer no legally definable guidelines whatever, with the result that the Governor thereby is invested with arbitrary and capricious powers to injure and damage

or praise and compliment accordingly as his whim may induce him to act.

The Commission of Inquiry consists of nine (9) members appointed by the Governor. Section 880.1. Moreover, the Governor appoints the chairman and vice-chairman. Section 880.2. A majority of five (5) controls. Section 880.4.

All public officials, personnel, employees and agents of all boards, commissions, departments and agencies of the State and of the political subdivisions of the State are mobilized and impressed into cooperative service with the Commission to the end of effectuating its function and duties by the provisions of 880.6(d). Moreover, on the simple request of the Governor the entire investigatory forces of the Commission of Inquiry are assignable to the State Police and during that assignment the assignees "have all the power and authority of other members of the State Police." Section 880.6(c). Thus, all the power and might of the State of Louisiana are harnessed to the executive juggernaut.

This great arsenal of power is concentrated in a narrow functional chamber aimed at conducting public trials concerning criminal law violations. Significantly, the Commission of Inquiry does not conduct inquiry which is related to or in furtherance of a legitimate task of the Legislature. In fact, it does not report to the Legislature. It is not a fact-finding agency of the Legislature or even of the Executive, such as permissibly may be created for the purpose of gathering facts to be used by the Legislature or the Executive in formulating remedial legislation. To the

contrary, it is prohibited from doing this forasmuch as it is powerless to "hold hearings or seek to ascertain the facts or make any reports or recommendations on any of the strictly civil aspects of labor problems or disputes." Section 880.6(b)<sup>1</sup>. It is an executive trial agency which receives evidence to ascertain the existence of "facts surrounding or pertinent to \*\*\*\* any actual or probable violations of the criminal laws of this State or of the United States which

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<sup>1</sup> B. The commission shall have no power, authority or jurisdiction to investigate, hold hearings or seek to ascertain the facts or make any reports or recommendations on any of the strictly civil aspects of any labor problem or dispute but inquiry into alleged criminal acts shall not be improper because recital thereof may reflect upon some civil aspects thereof, and its power, authority or jurisdiction shall in no case extend to (1) any matter which is solely an "unfair labor practice" or an "unfair employment practice" or a legitimate labor dispute under the provisions of any federal or state law; or (2) any matter which relates to legitimate economic issues arising between labor and management or the manner in which such labor practices or economic issues are to be settled between the parties, whether by negotiation, arbitration, lock-out or strike; or (3) any matter which relates solely to the internal affairs of labor organizations, including but not necessarily restricted to membership policies, election procedures, membership rights and like matters or (4) any alleged acts of violence or threats of violence or so-called "mass picketing," or like conduct by either an employer or a union, which is not related to bribery or extortion, as defined by law, but which is related only to an organizational objective of a labor union or which is related only to furthering the interests of one side or the other in a "labor dispute," as that term is defined by federal or state law, such conduct being already regulated by and subject to the police power of the state, exercised through such agencies as the Division of State Police; or (5) any matter which relates solely to the internal affairs of any business organization, including but not necessarily restricted to its labor and business policy and general operations, or (6) any matters which constitute a combination of any two or more of these. In addition, the commission shall have no power, authority or jurisdiction to file, intervene in or in any manner participate in any civil judicial proceedings, except for the purpose of seeking the enforcement of a subpoena issued by it in accordance with the provisions of this Part, or except for the institution of contempt proceedings as provided in this Part or except when the commission has been made a defendant in any civil suit.

relate to, arise out of or are connected with problems or disputes in the field of labor-management relations." Section 880.6(a).

After conducting its investigations and hearings, it is the mandatory duty of this Commission to make findings of fact limited to two (2) objectives: (a) the violations of any criminal law or laws of the United States or of the State of Louisiana, and (b) the guilt or innocence of specific individuals as to such criminal law violations. Section 880.7(a). Not only is it the mandatory duty of the Commission to make such "findings" but the Commission must "publicize" these "findings." Additionally, no such "findings" can be made and "publicized" unless it is preceded by a "public hearing." Section 880.7(a). Thus, the legislative intent to "publicly" condemn is unmistakably clear. After the Commission has made public "findings" that certain citizens are criminals it then becomes its mandatory duty to "report its findings and recommendations to the proper federal and state authorities, or either of them, charged with the responsibility for prosecution of criminal offenses." In addition, when directed to do so by the Commission, "the chairman shall file appropriate charges with the state and federal authorities having jurisdiction. Section 880.7(b).

This Commission is empowered to adopt rules and regulations controlling its function, to employ necessary personnel, to administer oaths, to issue subpoenas for the personal appearance of witnesses and for the production of books and to take depositions anywhere in the United States. Section 880.8. Subpoenas may be served by anyone

designated by the Commission and the Commission may apply to the courts to compel attendance of witnesses and it is empowered to compel obedience to its will by instituting contempt proceedings. Section 880.9.

Arrayed against such an ominous police structure is your appellant and persons similarly situated. One called as a witness may be a potential suspect. Nevertheless, neither prosecuting witness nor victim has a right to examine or cross-examine any witness who may testify for or against him.<sup>2</sup> There is no right to the effective assistance of counsel,<sup>3</sup> no right of confrontation, no right to compulsory process for the attendance of witnesses. There are no effective and meaningful rules of evidence, no meaningful and definable standards of guilt or innocence and no right of appeal.

The Commission may receive any type evidence, hearsay or otherwise. Furthermore, no matter how willful, how malicious, how irresponsible the conduct of the employees, agents, representatives and officials of the Commission may be, and no matter how grave the resultant injury, by virtue of the provisions of Section 880.16 the doors of all the

<sup>2</sup> Section 880.10 (b) expressly provides that:

*"In no event shall counsel for any witness have any right to examine or cross-examine any other witness \*\*\*."*

<sup>3</sup> While Section 880.10(b) grants to a witness the right to be accompanied by counsel, who may advise him, such right to counsel is made wholly ineffective, because counsel's act of advising the witness of his rights is "subject to such reasonable limitations as the commission may impose in order to prevent obstruction of or interference with the orderly conduct of the hearing." In fact, the insistence of counsel on his advocacy itself may be construed as disorderly behavior toward the commission and thus subject counsel to a contempt citation, pursuant to the provisions of 880.0(b) (2).

courts of Louisiana are shut against its victims for redress of grievances, including injury to person and reputation. Such is the nature and function of the Commission of Inquiry created by Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967.

### ***ACT PATENTLY UNCONSTITUTIONAL***

The validity of the provision of any statute must be tested not by its labels or title but on the basis of the terms employed. *Connerly v. General Construction Co.*, (1926) 269 U.S. 385, 46 S.Ct. 126, 70 L. Ed. 322. The terms employed by the Act under consideration unmistakably characterize and empower the Commission of Inquiry as an accusatory body charged with the exclusive responsibility of finding the existence of criminal law violations and of naming individuals who are guilty of these criminal violations. That is its *raison d'etre*. It can function only under the glare of public view. While it has power to hold executive hearings, evidence adduced during such hearings cannot form the basis of its "findings." Such evidence must be heard anew in open hearings before it can be considered by the Commission in making its "findings." Section 880.12(a). In effect, therefore, the Commission's sole function is to conduct what is tantamount to a preliminary hearing as used in the federal criminal law system or a preliminary examination as used in the state criminal law system. Moreover, while the incriminating and defamatory evidence is being heard, television cameras are grinding away and representatives of the news media are ever present collecting the evidence, sensationalizing it and subsequently disseminating it throughout the State and

even to the far reaches of the nation with the result that the entire population of the State sits as a jury to determine the guilt or innocence of the accused. In such a context the guilty verdict of the Commission is almost anti-climactic. Nevertheless, the accused stands formally adjudged a criminal. He is thereby forever stigmatized with all of the horrendous consequences of that stigma.

His prior good reputation in the community is reduced to rubbish. He is now a pariah, to be shunned. He is an object of derision. His wife, his children, his parents and his relatives must share his shame. A bearing of self-respect and personal dignity now is publicly judged as morbid arrogance or personal depravity. The stigma is like a communicable disease. Those who associate with him will contract the stigma. He is no longer a suitable candidate for employment. Prudent employers dare not risk contracting the disease which infects him. Thus, he suffers a great impairment of employment opportunities.

He has arrived at this disastrous station in life not because he is guilty of any wrongdoing. His abysmally servile and scandalous status exists because the State of Louisiana has deprived him of the opportunity to defend himself, to show the falsity of the dastardly charges made against him. He stands thus injured because in the face of the calumny which engulfs him he was not granted the right to confront his accusers, to have the effective assistance of counsel, to examine and cross-examine the witnesses against him, to bring witnesses to testify on his behalf. He was assassinated by weapons rejected as rank contrabands by all civilized societies; namely, opinion evi-

dence, innuendos, and hearsay testimony, because no effective and meaningful rules of evidence were applied to control the scope and nature of the evidence against him. His guilt was based on no meaningful and definable standards of guilt or innocence, and thus was the product of caprice and whim. In short, he is the victim of a classic Inquisition, an ugly recrudescence of the infamous days of Salem.

Standing thus denuded of personal dignity, defamed in good repute and denied of inalienable rights, he is without meaningful recourse or effective redress. Those officials who have plundered him are immune from civil liability by the very statute which authorized the slaughter. Those whose damaging hearsay evidence scandalized him enjoy the protective shield of quasi-privilege, because they were compelled by the duress of contempt punishment to respond to questions which expressly elicited such hearsay evidence. There is only one possible way out. The gods that be may prevail upon the Chairman of the Commission of Inquiry to administer the coup de grace, i.e., to file criminal charges against him as he is authorized to do by Section 880.7(b), so that finally the accused may have the opportunity to defend himself, to confront his accusers, to examine and cross-examine them, to bring witnesses to testify on his behalf, to cull the evidence against him by the employment of meaningful rules of evidence and to have his guilt or innocence determined by meaningful and definable standards. In this manner he stands the chance of being vindicated, of being exonerated, if only he can find a judge or jury who can still impartially evaluate the evidence against him. Should the Chairman of the Commission not be

possessed of the charity to administer the coup de grace, then he may still approach the state or federal district attorney on bended knees and beg to be criminally prosecuted so that thereby he may have the opportunity to be exonerated, to wash off the contamination of the stigma and erase his eroded image from the public mind, if that is still possible. In other words, he must invite the ignominy of a public trial, the further scourge of criminality and the financial burden of a defense for the opportunity to prove his innocence, to unring the bell of degradation sounded against him, to attempt to right a wrong that is constitutionally impermissible.

Thus by the plain terms of this statute the Commission of Inquiry of Louisiana conducts public trials concerning the existence of crimes and the guilt or innocence of persons in relation to those crimes. Furthermore, this public body determines the criminal liability of persons whom it may find are so involved. Moreover, such a determination or "finding" of criminal liability must be made public. Additionally, these findings of necessity contain a defamatory content. The only authority which this State agency lacks is the power to impose a fine or sentence the guilty person to a term of imprisonment. The lack of that power, however, does not make the adjudication or determination less binding. Nothing is more binding and everlasting so nor more consummately injurious than a public condemnation formally pronounced after a public hearing by a State agency whose sole mission is to make such a determination.

The apocryphal claim that the state Commission is

nothing but an innocent fact-finding agency such as was involved in *Hannah v. Larche* (1960), 363 U.S. 420, 80 S.Ct. 1502, is supported neither by the terms of the state statute in controversy nor by the decision in HANNAH.

There is a marked difference between what is permitted in HANNAH and what is licensed in the instant case. For example, as the court observed in HANNAH, "potentially defamatory, degrading, or incriminating testimony shall be received in **executive session**, and that any person defamed, degraded, or incriminated by such testimony shall have an opportunity to appear voluntarily as a witness and to request the commission to subpoena additional witnesses; that testimony taken in executive session shall be released only upon the consent of the commission." (80 S.Ct. at p. 1509). The very contrary is true as to the function of the Commission of Inquiry. For example, the Commission deals **only in incriminating testimony**. Nothing heard in executive session may be considered by it in making its findings. Its findings are based **entirely** on incriminating evidence and its findings can relate to **nothing but incriminating testimony**. Of necessity its findings embrace a defamatory content. Further its incriminatory and defamatory findings must be **publicized**. The ultimate objective of the Commission function is to deliver these incriminatory findings to a state or federal authority charged with the responsibility of pursuing criminal prosecutions or to permit and direct its Chairman to institute such criminal prosecution. This is a far cry from the Commission function in HANNAH. In fact, in his concurring opinion Justice Frankfurter states that if the function of the Commission in HANNAH were equivalent to that of the Commission of Inquiry involved in

the instant case, the decision would be the reverse of what it was. Said Justice Frankfurter (80 S.Ct. at p. 1543):

"Were the Commission exercising an accusatory function, were its duty to find that named individuals were responsible for wrongful deprivation of voting rights and to advertise such finding or to serve as part of the process of criminal prosecution, the rigorous protections relevant to criminal prosecutions might well be the controlling starting point for assessing the protection which the Commission's procedure provides."

This is precisely what the State Commission of Inquiry is. It exercises (a) an accusatory function, (b) its duty is to find that named individuals are responsible for criminal violations, (c) it must advertise such finding, and (d) its finding serves as part of the process of criminal prosecution. Thus, all four conditions which Justice Frankfurter stated would demand the rigorous protections relevant to criminal prosecutions exist and concur in connection with the function of the Commission of Inquiry. This simply means that under the HANNAH decision the state statute is unconstitutional. As Justice Frankfurter observed the objectives and the function of the Commission on Civil Rights involved in HANNAH were completely opposite these involved in the instant case. Following his comments as quoted above Justice Frankfurter continued: (80 S.Ct. at p. 1543)

"The objectives of the Commission on Civil Rights, the purpose of its creation, and its true functioning

are quite otherwise. It is not charged with official judgment on individuals nor are its inquiries so directed. The purpose of its investigations is to develop facts upon which legislation may be based. As such, its investigations are directed to those concerns that are the normal impulse to legislation and the basis for it. To impose upon the Commission's investigations the safeguards appropriate to inquiries into individual blame-worthiness would be to divert and frustrate its purpose \* \* \*."

The sole purpose of the State Labor-Management Commission of Inquiry is to make a finding of criminal law violations and an official judgment on individuals guilty of them. These judgments have but one function and that is to condemn and stigmatize individuals. Furthermore, these judgments are preliminaries to and a part of the process of criminal prosecution. In such a situation all of the constitutional safeguards appropriate to criminal prosecution must be accorded these individuals. Justice Frankfurter so stated in his concurring opinion in HANNAH:

"In appraising the constitutionally permissive investigative procedures claimed to subject individuals to incrimination or defamation without adequate opportunity for defense, a relevant distinction exists between those proceedings which are preliminaries to official judgments on individuals and those, like the investigation of this Commission, charged with responsibility to gather information as a solid foundation for legislative action. Judgments by the Commission condemning or stigmatizing individuals are not called for.

When official pronouncements on individuals purport to rest on evidence and investigation, it is right to demand that those so accused be given a full opportunity for their defense in such investigation, excepting, of course, grand jury investigations."

The United District Court adopted the opinion of the Louisiana State Supreme Court rendered in *Martone v. Morgan*, 207 S.2d 770, as its own in connection with the constitutional question raised concerning the state law involved. In the course of its opinion the Louisiana Supreme Court pointed to the disclaimer in the state statute that the state agency had no authority to make binding adjudication and urged this as a magic formula of immunity against the practical effects of the incriminatory and defamatory judgments against individuals, which the state agency is duty bound to make. This is an erroneous postulate.

It is immaterial for the purpose of the resultant irreparable injury to the individual, that the "findings" of the Commission do not rise to the dignity of legalistic or binding "adjudication." The fact of the "findings" is the same. These "findings" declare a status. They are official pronouncements on individuals. They condemn; they stigmatize; they maim; and they cripple. The resultant injury is real, immediate and incalculable. As Justice Frankfurter said in his concurring opinion in *Joint Anti-Fascist Refugee Committee v. McGrath* (1951), 341 U.S. 123, 71 S.Ct. 624, in connection with an identical argument: (71 S.Ct. at p. 650):

"Nor does he obtain immunity on the ground that

designation is not an 'adjudication' or a 'regulation' in the conventional use of those terms. Due process is not confined in its scope to the particular forms in which rights have heretofore been found to have been curtailed for want of procedural fairness. Due process is perhaps the most majestic concept in our whole constitutional system. While it contains the garnered wisdom of the past in assuring fundamental justice, it is also a living principle not confined to past instances."

The rights on individuals appearing before the Commission have been curtailed for want of procedural fairness and whether the form of the juggernaut which tramples these rights is that of "adjudication," "regulation" or "findings" the proscription of due process applies. In such a context the State statute's repugnance to elementary constitutional strictures is transcendent. *Greene v. McElroy* (1959), 360 U.S. 474, 79 S.Ct. 1400; *Joint Anti-Fascist Refugee Committee v. McGrath, supra*.

In *HANNAH* the court expressly held that the commission in question did "not hold trials or determine anyone's civil or criminal liability." The Commission under the State law however does in fact hold trials. Moreover, it holds public trials. The Commission furthermore determines the criminal liability of persons appearing before it and otherwise. In *HANNAH* the court held that the commission did not "indict." But the Commission under the State law has the authority to effect the equivalent of an indictment. It is expressly authorized, through its Chairman, to file criminal charges against individuals. Thus, it accuses, which is

what an indictment does. In HANNAH the court held that the commission "does not make determinations depriving anyone of his life, liberty or property." The Louisiana Commission however does make such determinations. Its determination that an individual is guilty of crime denies one of his legal right to be free from defamation, a property right recognized by the Court in *Joint Anti-Fascist Refugee Committee v. McGrath, supra*. And as the court held in HANNAH,

"Thus, when governmental agencies adjudicate or make binding determinations which directly affect legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process."

A contextual evaluation of the statute in question leaves no room for doubt that the consequence of being adjudged or found guilty of criminal law violations, of being deprived of the right to be free from defamation, is neither conjectural nor incidental to the hearings of the Commission. Such consequences are the sole objectives of the hearings. The public pronouncement of such adjudication or findings is the sole reason for which the Commission exists; it is the sole purpose for which it functions. The Commission of Inquiry of Louisiana has no other legitimate purpose than to make such adjudication. And in the constitutional context of due process, such findings are just as binding and just as much an adjudication as was the Attorney General's "designation" of subversion, found by the Court to be constitutional adjudication in *Joint Anti-Fascist Refugee Committee v. McGrath, supra*; just as much an adjudica-

tion as was the fixing of minimum rates by the Secretary of Agriculture in *Morgan v. United States*, 304 U.S. 1, 58 S.Ct. 773; and just as much of an adjudication as was the Security Clearance findings in *Greene v. McElroy, supra*.

Thus, the State statute in question, for the multiple reasons heretofore mentioned, obviously is constitutionally null and void.

**THE ACTS AND DEEDS OF STATE OFFICIALS  
DEPRIVE APPELLANT OF HIS  
CONSTITUTIONAL LIBERTIES**

An approach to a discussion of defendants' motion to dismiss must be made with the acknowledgment that such a motion admits all of the allegations of fact in the complaint. *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 71 S.Ct. 624; *Robichaud v. Ronan*, 351 F.2d 533. Furthermore, as stated by the court in *Lewis v. Brautigam*, 227 F.2d 124, 127:

"A complaint should not be dismissed on motion, unless, upon any theory it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts that could be proved in support of his claim."

The broad reach of the federal statute under consideration was defined almost thirty years ago in *Hague v. CIO* (1939), 307 U.S. 496, 59 S.Ct. 954, to include all of the rights embraced by the Fourteenth Amendment in these words:

"It (1983) thus includes the Fourteenth Amendment and such privileges and immunities as are secured by the due process and equal protection clauses, as well as by the privileges and immunities clause of that Amendment. \* \* \*"

Furthermore, as stated by the court in *Ex Parte, Virginia*, 100 U.S. 339, 347:

"Whoever, by virtue of public position under a state government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates these constitutional inhibitions \* \* \*."

Salient aspects of appellant's original and supplemental petitions establish that defendants, in their official capacities as state officials, conspired together and acted in concert with others willfully and purposefully to deny and have denied to and deprived appellant and those similarly situated of their rights, privileges and immunities secured to them by the United States Constitution, including by way of illustration the right to (a) the equal benefits and protections of state laws, (b) the privilege not to be falsely accused of crime, (c) impartial justice, (d) the right not to be wrongfully prosecuted on the basis of false charges of criminal law violations, (e) the right to privacy, (f) the right to live in peace and dignity, free of false and malicious accusations, (g) the right to a good reputation and not unjustly and wrongly to be defamed and degraded, (h) the right not to have a pall of shame and public obloquy engulf him, his parents, his relatives and friends, and (i) the right

to earn a living and belong to a labor union without impairment to job opportunities. Such state actions give rise to substantial federal questions. *Cooper, et al., v. Aaron, et al.* (1958), 358 U.S. 1, 78 S.Ct. 1401; *State of Missouri, ex rel., Gaines v. Canada, et al.* (1938), 305 U.S. 337, 59 S.Ct. 232; *Monroe v. Pape*, 81 S.Ct. 473; *United States v. Classic*, 313 U.S. 299, 61 S.Ct. 1031; *Pyle v. Kansas*, 317 U.S. 213, 63 S.Ct. 177; *Hague v. CIO*, 307 U.S. 496, 59 S.Ct. 954; *Birnbaum v. Trussell*, 371 F.2d 672; *Basista v. Weir*, 340 F.2d 74; *Nesmith v. Alford*, 318 F.2d 110; *Cohen v. Norris*, 300 F.2d 24; *Hughes v. Noble*, 395 F.2d 495; *Brazier v. Cherry*, 293 F.2d 400; *Coleman v. Johnson*, 247 F.2d 273; *United States, ex rel., Potts v. Rabb*, 141 F.2d 45; *Valle v. Stingel*, 176 F.2d 697; *Cancino v. Sanchez*, 379 F.2d 808; *Jenks v. Henys*, 378 F.2d 335; *Brown v. Brown*, 368 F.2d 992; *Morgan v. Labiak*, 368 F.2d 338; *DeWitt v. Pail*, 366 F.2d 682; *Smith v. Hampton Training School for Nurses*, 360 F.2d 577; *Rivers v. Royster*, 360 F.2d 592; *Birnbaum v. Trussell*, 371 F.2d 692; *Hoffman v. Halden*, 268 F.2d 280; *Lewis v. Brautigan*, 227 F.2d 124, 55 A.L.R.2d 505 (5 Cir. 1955); *Scolnick v. Winston*, 219 F.Supp. 836, 842 (S.D. N.Y. 1963); *Egan v. City of Aurora*, 291 F.2d 706, 708 (7 Cir. 1961); *Jennings v. Nester*, 217 F.2d 153, 154 (7 Cir. 1954).

Furthermore, the right to belong to a labor union is one secured to appellant by the First and Fourteenth Amendments to the United States Constitution and thus cannot be taken without complying with the rigorous demands of the due process and equal protection clause of the Fourteenth Amendment: *Beauharnais v. People of the State of Illinois*

(1952), 343 U.S. 250, 72 S.Ct. 725, rehearing denied, 72 S.Ct. 1070, 343 U.S. 988; *N.A.A.C.P. v. Button, et al.* (1963), 371 U.S. 415, 83 S.Ct. 328.

It is respectfully submitted that the United States District Court committed reversible error in granting defendants' motion to dismiss.

Respectfully submitted,

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Attorney for Appellant

***PROOF OF SERVICE***

I, J. Minos Simon, attorney for appellant herein and a member of the bar of the Supreme Court of the United States, hereby certify that on the \_\_\_\_\_ day of September, 1968, I served a copy of the foregoing statement as to jurisdiction on the several parties hereto by mailing said copies in a duly addressed envelope with first-class postage prepaid to their attorneys of record, Mr. Jack P. F. Gremillion, Attorney General of Louisiana, Baton Rouge, Louisiana; Mr. Ashton L. Stewart, Special Assistant Attorney General, 604 Union Federal Building, Baton Rouge, Louisiana; and Mr. Victor A. Sachse, Special Assistant Attorney General, 701 Fidelity National Bank Building, Baton Rouge, Louisiana.

Lafayette, Louisiana, this \_\_\_\_\_ day of September, 1968.

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J. MINOS SIMON





## APPENDIX A

### UNITED STATES DISTRICT COURT EASTERN DISTRICT OF LOUISIANA BATON ROUGE DIVISION

#### CIVIL ACTION NUMBER 68-38

RODERICK JENKINS

VERSUS

JOHN JULIEN McKEITHEN, CECIL MORGAN,  
PAUL M. HEBERT, FLOYD C. BOSWELL,  
RALPH F. HOWE, A. R. JOHNSON, III, and  
BURT S. TURNER

#### CIVIL ACTION NUMBER 68-42

JERRY SYLVESTER

VERSUS

CECIL MORGAN, THOMAS W. McFERRIN, and  
WILLIAM V. REDMANN

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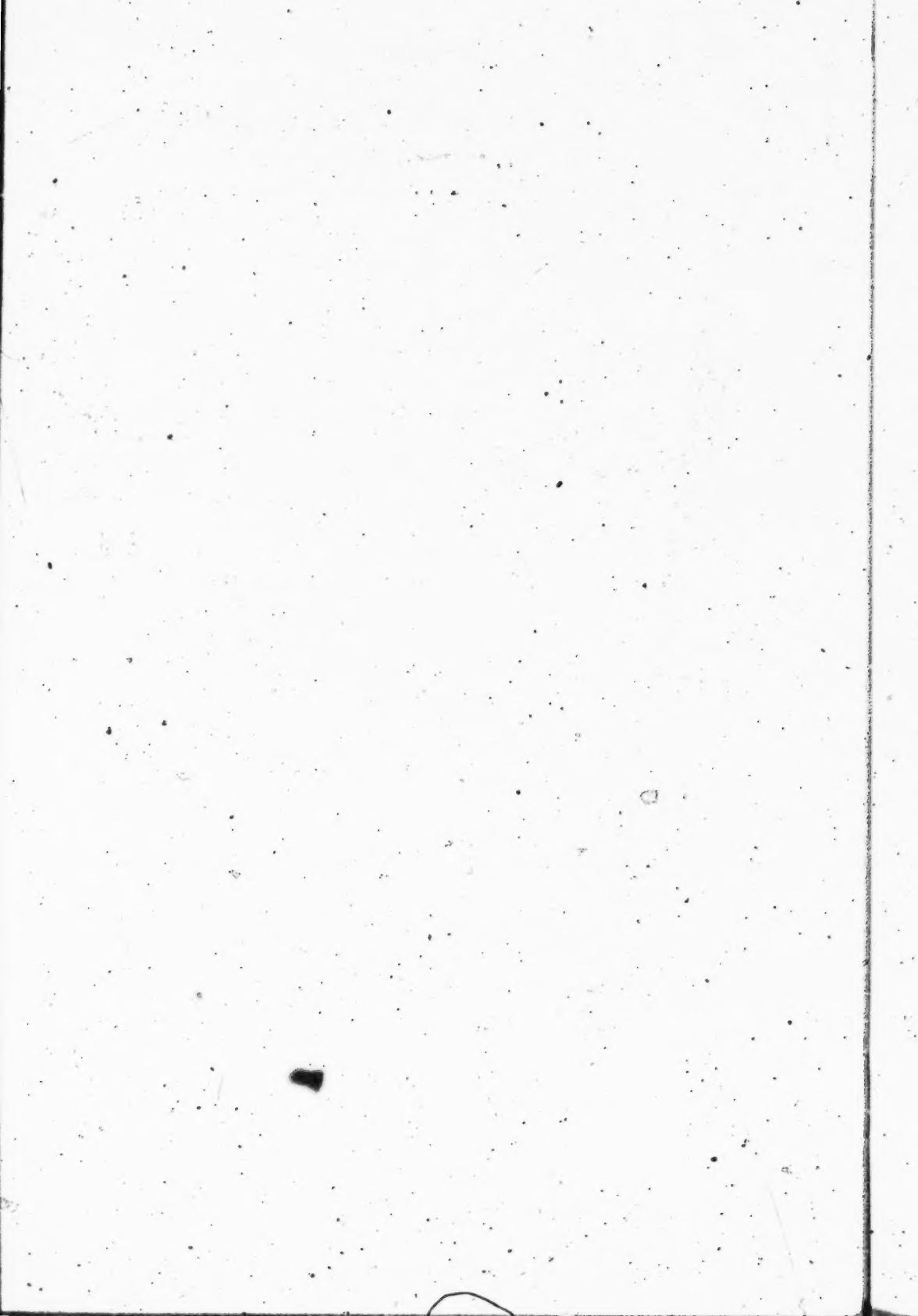
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AINSWORTH, Circuit Judge, and WEST and MITCHELL,  
District Judges: PER CURIAM:

These two suits, consolidated for hearing on motion to dismiss, attack the constitutionality of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967. This Act, LSA-R.S. 23:880.1-880.18, provides for the creation and operation of what is known as the Labor-Management Commission of Inquiry. Since injunctive relief is sought in both cases based upon the alleged unconstitutionality of said Act, this three-judge district court was convened pursuant to Title 28 U.S.C.A. 2281 and 2284. A hearing on the motions to dismiss was held on June 6, 1968, and after careful study of the voluminous records and exhaustive briefs of counsel, it is the opinion of this Court that the motions to dismiss must be granted.

The constitutionality of this Act has been challenged previously in the state courts of Louisiana in the case of *Martone v. Morgan*, 207 So.2d 770, wherein the plaintiff was represented by the same attorney now representing the plaintiff Jenkins. At the district court level, Mr. Martone prevailed, but that decision was reversed in a well-written opinion by Mr. Justice E. Howard McCaleb of the Louisiana Supreme Court. We agree with the unanimous opinion of the Louisiana Supreme Court in *Martone* that the case of *Hannah v. Larche*, 363 U.S. 420, 80 S.Ct. 1502, 46 L.Ed.2d 1307, is dispositive of the issues pertaining to the constitutionality of the Act here in question. The Act was properly analyzed by the Louisiana Supreme Court in *Martone* when it said:

"The Legislature of 1967, by Act 2 of the Extraordinary Session thereof (R.S. 23:880.1-880.18), created a commission denominated as the 'Labor-Management Commission of Inquiry' to investigate and find facts relating to violations or possible violations of the criminal laws of this State or of the United States arising out of or in connection with matters in the field of labor-management relations. According to the preamble to the act, this Commission of Inquiry was conceived and created to examine the causes for the unprecedented conditions existing in the State in the field of labor-management relations under which, by reason of suspected violations of the State and Federal criminal laws, there has been a shutdown of construction work involving industrial development projects furnishing employment to thousands of persons; that the present conditions vitally affect the public interest and threaten to disrupt the conduct of normal labor-management relations. It was further stated that, in view of the presently existing conditions, the public interest requires that the causes thereof be investigated on a statewide basis as a supplement to assist activities of the district attorneys, grand juries and other law enforcement officials and agencies of this State and of the United States.

"In the body of the act, the Commission is created and invested with power to ascertain the facts surrounding and pertaining to any actual or possible violations of the criminal laws relating to, arising out of or connected with problems or disputes in the field of labor-management relations. This power was limited

however, the act declaring, '\*\*\* it shall be investigatory and fact-finding only \*\*\*,' and it was further provided that 'The commission shall have no authority to and it shall make no binding adjudication with respect to such violation or violations; \*\*\*' and 'No findings, conclusions, recommendations or reports of the commission may be used as *prima facie* or presumptive evidence of the guilt or innocence of any person in any court of law.' Additionally, the act provides that the Commission '\*\*\* shall make and publicize its findings with respect to the question whether or not there is probable cause to believe that there are or have been violations of any criminal law \*\*\*. Copies of its report shall be immediately furnished to the governor, the lieutenant governor, the attorney-general and the legislature.'

"After the membership on the Commission had been duly appointed and the body began to function conformably with the authority vested in it, plaintiff instituted the present suit for an injunction as a taxpayer to have the statute declared unconstitutional on various grounds which will hereinafter be set forth and discussed. The principal attack levelled by the plaintiff is that the act denies him due process as guaranteed by Section 2 of Article I of the Louisiana Constitution and the Fourteenth Amendment to the Constitution of the United States, because the powers vested in the Commission are such that, in their investigations and hearings authorized under the act, plaintiff and/or persons similarly situated are denied assistance of counsel, the right of confrontation, the

right of cross-examination of witnesses and the right to compulsory process for their witnesses. The provisions of the act thus assailed have to do with the procedure rules set forth in the act for hearings by the Commission.

\* \* \* \* \*

"\* \* \* we direct our immediate attention to plaintiff's principal attack, and the holding of the trial judge, that R.S. 23:880.1-880.18 denies plaintiff and those similarly situated due process under the State and Federal Constitutions in that it is an agency \* \* \* which makes determinations in the nature of adjudications affecting legal rights. \* \* \* Its duty in large part is to find that named individuals are responsible for criminal actions and to *advertise* (publicize) such findings and serve as part of the process of criminal prosecution."

"This ruling, in our opinion, does not conform with the nature of the statute and the purpose for its enactment, for the Labor-Management Commission of Inquiry is not invested with any power to make adjudications affecting legal rights. On the contrary it is, as its provisions expressly set forth, an administrative commission (R.S. 23:880.1) created for the special purpose of investigating and finding facts in relation to violation of existing criminal laws \* \* \* affecting in a significant manner labor-management relations in one or more areas of the state \* \* \* in various construction projects which may, in the

opinion of the Governor, operate as a serious threat to the economic well-being of the affected area or the State as a whole (R.S. 23.880.5). By Section 880.6(A) it becomes the duty of the Commission, when called on by the Governor to investigate and hold hearings, to receive testimony and documentary evidence and make findings with respect to any actual or probable violations of criminal laws which relate to the problems or disputes in the field of labor-management relations.

"Under the provisions of Section 880.7(A), the Commission is required to publicize its findings with respect to the question whether or not there is probable cause to believe that there have been violations of any criminal law arising out of the subject matter of its investigation. But it \*\*\* shall have no authority to and it shall make no binding adjudication with respect to such violation \*\*\*; however, it may make such recommendations to the Governor for action as it deems appropriate, and copies of its report are to be furnished to the Governor, Lieutenant Governor, the Attorney General and the Legislature. Nevertheless, its findings, recommendations and conclusions may not be used as *prima facie* or presumptive evidence of guilt or innocence of any person in any court of law.

"It is seen from the foregoing that this administrative body has no right to adjudicate; it merely finds facts and recommends. Hence, it is difficult to perceive that these limited powers impinge upon any

constitutional guarantee to which those being investigated are entitled under the Bill of Rights."

The Act here in question was obviously carefully drafted with *Hannah* in mind. Its provisions are carefully tailored along the lines of the statute creating the Commission of Civil Rights, 71 Stat. 634, 42 U.S.C. 1975-1975(e), 42 U.S.C.A. 1975-1975(e), which was at issue in *Hannah*, and we conclude that the holding there is completely dispositive of the constitutional question here involved. In *Hannah*, the court concluded:

"'Due process' is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts. Thus, when governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process. On the other hand, when governmental action does not partake of an adjudication, as for example, when a general fact-finding investigation is being conducted, it is not necessary that the full panoply of judicial procedures be used. Therefore, as a generalization, it can be said that due process embodies the differing rules of fair play, which through the years, have become associated with differing types of proceedings. Whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceed-

ing, are all considerations which must be taken into account. An analysis of these factors demonstrates why it is that the particular rights claimed by the respondents need not be conferred upon those appearing before purely investigative agencies, of which the Commission on Civil Rights is one.

"It is probably sufficient merely to indicate that the rights claimed by respondents are normally associated only with adjudicatory proceedings, and that since the Commission does not adjudicate it need not be bound by adjudicatory procedures. Yet, the respondents contend, and the court below implied, that such procedures are required since the Commission's proceedings might irreparably harm those being investigated by subjecting them to public opprobrium and scorn, the distinct likelihood of losing their jobs, and the possibility of criminal prosecutions. That any of these consequences will result is purely conjectural. There is nothing in the record to indicate that such will be the case or that past Commission hearings have had any harmful effects upon witnesses appearing before the Commission. However, even if such collateral consequences were to flow from the Commission's investigations, they would not be the result of any affirmative determinations made by the Commission, and they would not affect the legitimacy of the Commission's investigative functions." 80 S.Ct. at 1514.

The following quote from *Hannah* is especially applicable here:

"On the other hand, the investigative process could be completely disrupted if investigative hearings were transformed into trial-like proceedings, and if persons who might be indirectly affected by an investigation were given an absolute right to cross-examine every witness called to testify. Fact-finding agencies without any power to adjudicate would be diverted from their legitimate duties and would be plagued by the injection of collateral issues that would make the investigation interminable. Even a person not called as a witness could demand the right to appear at the hearing, cross-examine any witness whose testimony or sworn affidavit allegedly defamed or incriminated him, and call an unlimited number of witnesses of his own selection. This type of proceeding would make a shambles of the investigation and stifle the agency in its gathering of facts." 80 S.Ct. at 1515.

The plaintiffs in the instant cases have not been called as witnesses before the Commission, and to allow them, along with the many others whom they claim to represent, to cross-examine witnesses and present evidence to the Commission would certainly "make a shambles of the investigation and stifle the agency in its gathering of facts." We need but to look at the lengthy pleadings filed herein by plaintiffs to conclude that the court in *Hannah* was right when it said that if investigative hearings were transformed into trial-like proceedings the fact-finding agency would be "plagued by the injection of collateral issues that would make the investigation interminable." For example, the plaintiff Jenkins alleges, *inter alia*, that the Governor of the State of Louisiana, together with members of the Labor-

Management Commission, including the Dean of the Louisiana State University Law School, the Dean of the Tulane Law School, the president of a local bank, and others "have \*\*\* singled out for murder \*\*\* six members of Teamsters Local No. 5<sup>1</sup> of Baton Rouge, Louisiana." He further alleges that these same gentlemen are using their "great arsenal of power" to destroy the current power structure of the labor union aforesaid" (Teamsters Local No. 5 headed by one Edward Grady Partin) "and to install a new power structure oriented and subservient to the James R. Hoffa group or clique of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America." The plaintiff Jenkins then alleges that these same defendants have caused the arrest of the said Edward Grady Partin on a charge of aggravated assault and that their action "is but a response to the announcement of the candidacy of Honorable Robert F. Kennedy for the nomination for the presidency of the United States by the Democratic Party of the United States, in that the conspirators herein are hoping thereby to induce Edward Grady Partin to recant his testimony heretofore given against James R. Hoffa, to be used as a basis to obtain a new trial for and the consequent release from prison of James R. Hoffa prior to the democratic presidential nomination, so as thereby to thwart the nomination of the said Robert F. Kennedy, who, as Attorney General of the United States, ordered and managed the prosecution and conviction of the said James R. Hoffa."

These are but examples of the twenty-one pages of allegations contained in the complaint filed herein by Jenkins. These are the issues that plaintiffs would like to

inject into Commission hearings, and these are the issues plaintiffs would like to air out in open court before this tribunal. The entire history of these proceedings convinces this Court that plaintiffs are far more interested in obtaining a forum in which to publicize their extraordinary allegations than in obtaining an adjudication of issues pertaining to the constitutionality of the Act involved. We decline to allow them to do so here.

A careful reading of the Act shows that plaintiffs' analysis thereof, as set forth in rather strained and extreme terms in the complaints filed herein, is simply not an accurate analysis of the powers, duties, and functions of the Commission created thereby. We conclude instead, that as stated in *Hannah*:

"\* \* \*. the purely investigative nature of the Commission proceedings, the burden that the claimed rights would place upon those proceedings, and the traditional procedure of investigating agencies in general, leads us to conclude that the Commission rules of procedure comport with the requirements of due process." 80 S.Ct. at 1519.

While ordinarily it is only the question of the constitutionality of the state statute involved and whether or not injunctive relief in connection therewith should be granted that is before the three-judge court; nevertheless, where other issues are also involved, it is, to large extent, discretionary with the court as to whether or not such other issues will be resolved by the three-judge court. The test is whether or not such issues as would ordinarily be heard by

a single-judge court are so interrelated to the three-judge questions as to present one continuous transaction or set of operative facts. *Turner v. Goolsby*, 255 F.Supp. 724. In the instant case, in addition to alleging the unconstitutionality of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967, plaintiff in the *Jenkins* case also alleges that the various actions of the Commission alleged in his complaint, including those hereinabove quoted, constituted a violation of his civil rights under Title 42 U.S.C.A. 1981, 1983, and 1988. These allegations are so intertwined with the question of the constitutionality of the Act itself that they are proper claims to be considered by this Court.

After having determined that the Act itself is constitutional, and that the procedures adopted by the Commission do not do violence to plaintiffs' constitutional rights, we now conclude that plaintiffs have not stated a claim for relief under Title 42 U.S.C.A., Section 1981, 1983, or 1988.

Reduced to essentials, the plaintiff, Jenkins, claims that he, who has not been called before the Labor-Management Commission of Inquiry, has nevertheless, as a result of hearings held by that Commission, been charged under four certain bills of information filed by the District Attorney of Iberville Parish, Louisiana, with criminal conspiracy to commit a battery with a dangerous weapon on four different people, all in violation of certain state statutes. He alleges that these charges are false and that he is not guilty. He alleges that he has not been tried as speedily as he would like, even though his own allegations certainly

indicate no real violation of his constitutional right to a speedy trial. He alleges that these charges against him resulted from improper actions on the part of the Labor-Management Commission of Inquiry, and that there is no justification whatsoever for them having been filed against him. In other words, he alleges that he is not guilty.

The plaintiff Sylvester merely claims that continued hearings by the Commission while charges are pending against him in Iberville Parish, Louisiana, will make it impossible for him to obtain an impartial jury for the trial of his case, and hence he seeks to have this Court enjoin all further hearings by the Commission so long as these charges against him are pending.

All of these allegations of both plaintiffs are merely potential defenses to the criminal charges pending against them and may be urged if and when they are brought to trial on those charges. This Court must assume that the courts of Louisiana before whom plaintiffs' cases are pending will perform their duty and will see that the plaintiffs are given a fair and impartial trial and that all of their constitutional and statutory rights are respected. Unless and until the contrary is shown, the allegations made herein by these plaintiffs are premature, and do not state a claim upon which this Court could or should grant relief. As stated by the United States Supreme Court in Stefanelli v. Minard, 342 U.S. 117, 96 L.Ed. 138, 72 S.Ct. 118, concerning intervention of the federal courts in cases of this kind:

"If we were to sanction this intervention, we would

expose every state criminal prosecution to insupportable disruption. Every question of procedural due process of law—with its far-flung and undefined range—would invite a flanking movement against the system of State courts by resort to the federal forum, with review if need be to this Court, to determine the issue. Asserted unconstitutionality in the impaneling and selection of the grand and petit juries, in the failure to appoint counsel, in the admission of a confession, *in the creation of an unfair trial atmosphere*, in the misconduct of the trial court—all would provide ready opportunities, which conscientious counsel might be bound to employ, to subvert the orderly, effective prosecution of local crime in local courts. To suggest these difficulties is to recognize their solution." (Emphasis supplied.)

Plaintiffs argue that the teaching of *Dombrowski v. Pfister*, 380 U.S. 479, 14 L.Ed.2d 22, 85 S.Ct. 1116, is controlling here. We disagree. None of the special circumstances noted in *Dombrowski* appear here. *Dombrowski* held that the statute there under attack operated on its face to abridge the plaintiff's First Amendment right of freedom of expression. The court there found that to force the plaintiff to wait and urge his defenses during his state court criminal trial would result in "a substantial loss or impairment of freedom of expression" in the meantime. Such is not the case here. *Dombrowski* is inapplicable.

In passing, it is noted that the plaintiffs attempt to bring these suits as "class actions," claiming to represent themselves "and all others similarly situated." Suffice it to say

that the requirements of Rule 23 of the Federal Rules of Civil Procedure are obviously lacking in these cases, and thus this Court must necessarily conclude that these suits involve only the claims of the individual plaintiffs named herein, and that plaintiffs' attempt to make these actions "class actions" must fail.

For these reasons, defendants' motions to dismiss each of these cases will be granted, and a decree will be entered accordingly.

Baton Rouge, Louisiana, June 26, 1968.

/s/ Robert A. Ainsworth, Jr.

Robert A. Ainsworth, Jr., Circuit Judge

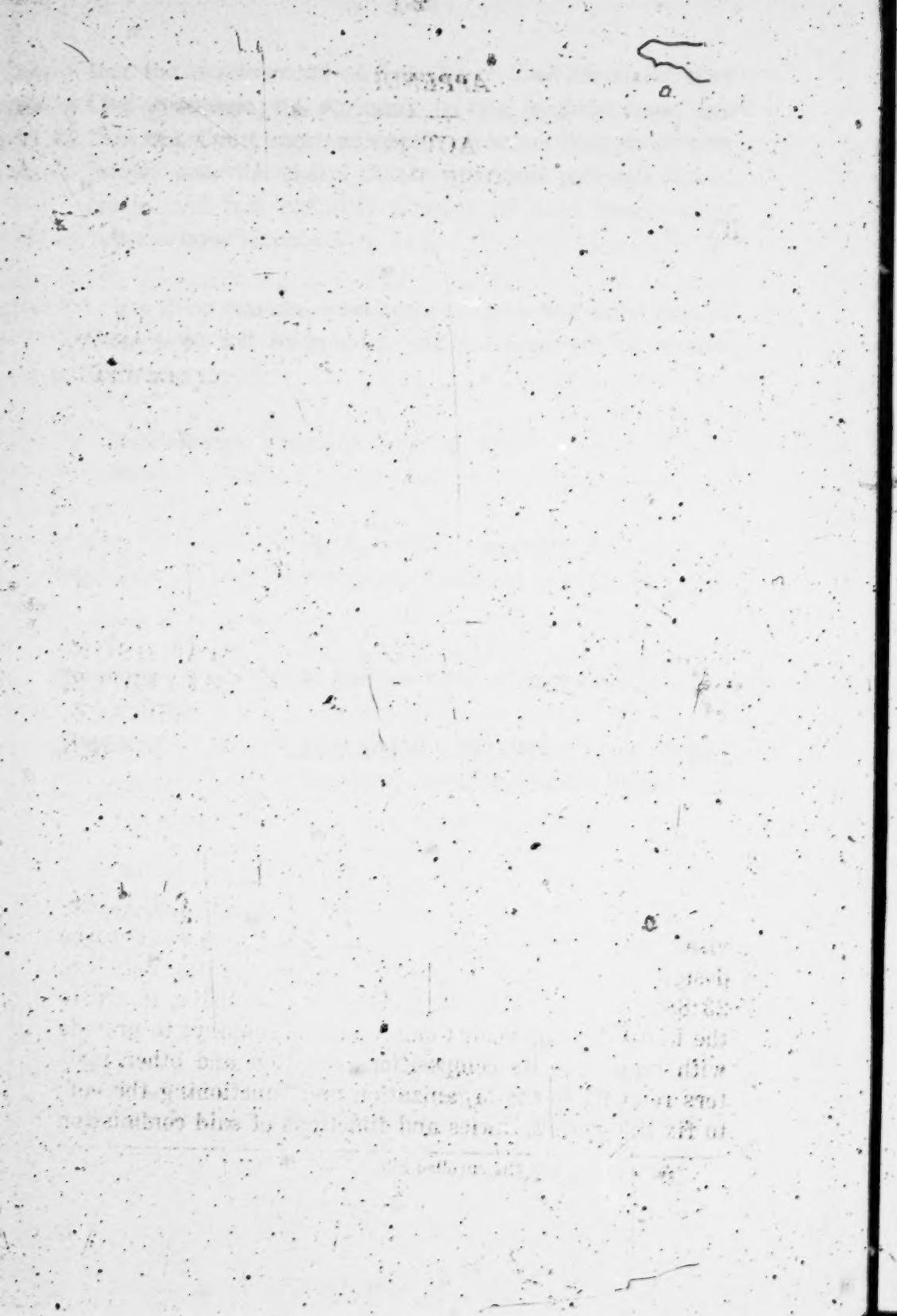
/s/ E. Gordon West

E. Gordon West, District Judge

/s/ Lansing L. Mitchell, District Judge

Lansing L. Mitchell, District Judge





## APPENDIX B

ACT NO. 2  
HOUSE BILL NO. 2

BY: MESSRS. MUNSON, LeBRETON, ORDONEAUX, GREMILLION AND MRS. WALKER AND MESSRS. DAWSON, McGEHEE, KEOGH, BERNHARD, HIMEL, TRICHE, GUIDRY, DWYER, BEESON, McMILLAN,\* S. M. MORGAN, CASEY, TARVER, ANGELLE, SINGLETON, DeWITT, GREGSON, BOESCH, HILLENSBECK, CULPEPPER, COOPER, WILLIAMS, SULLIVAN, FORTIER, BORDES, CEFALU, FULCO, A. D. BROWN, JOHNSTON, DELONY, ANZELMO, BLUE, CHAISSON, CHRISTIAN, ORAIS, DALEY, LeBLANC, EARLY, GIBBS, GILL, HESSLER, KELLER, LANCASTER, LANDRENEAU, LAURICELLA, LYONS, MARCEL, McLAIN; O'BRIEN, PATTEN, POLK, RICHARDSON, SCHIELE, SIMON, STROTHER, SYLVESTER, TALBOT, VESICH, WILBANKS, WOMACK, WOOD, BARRANGER, BAUER, BEL, COLLIER AND SENATORS BLAIR AND O'KEEFE

## AN ACT

To amend Chapter 8 of Title 23 of the Louisiana Revised Statutes of 1950, to add thereto a new Part, to be designated as Part III-A thereof and containing R.S. 23:880.1 through R.S. 23:880.18, both inclusive, to create the Labor-Management Commission of Inquiry; to provide with respect to its composition, selection and other matters relating to the organization and functioning thereof; to fix the powers, duties and functions of said commission

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\*As it appears in the enrolled bill.

in connection with the investigation and findings of facts relating to violations or possible violations of criminal laws of the state of Louisiana or of the United States arising out of or in connection with matters in the field of labor-management relations, including the exercise of the subpoena power; the authority to take depositions; to authorize the commission to hold executive and public hearings; to provide with respect to the rights, privileges, duties and immunities of witnesses; to define certain misdemeanors and fix penalties therefor; to provide with respect to contempt committed before the commission or in connection with its process; to require cooperation with the commission by all public officials, boards, commissions, departments and agencies of the state and all political subdivisions thereof; to otherwise provide with respect to matters pertaining to the purposes for which said commission is created, and to appropriate the sum of Two Hundred and Fifty Thousand (\$250,000.00) Dollars, or so much thereof as may be necessary, out of the General Fund of the state of Louisiana for the fiscal year 1967-68 to the Labor-Management Commission of Inquiry, to be used by it for operations in connection with the purposes for which it is created.

WHEREAS, unprecedented conditions presently exist in the state under which there has been a shut-down of construction work involving industrial development projects giving employment to thousands of persons and vitally affecting the public interest and threatening the orderly conduct of normal labor-management relations; and

WHEREAS, in connection with the conditions above referred to there have been allegations and accusations of violations of the state and federal criminal laws which should be thoroughly investigated in the public interest; and

WHEREAS, in order to supplement and assist the efforts and activities of the several district attorneys, grand juries and other law enforcement officials and agencies of the State of Louisiana and of the United States, it is imperative that additional investigative facilities on a state-wide basis be made available; and

WHEREAS, it is essential that immediate action be taken to empower the Governor in this existing situation and in any similar emergencies that may arise in the future promptly to initiate action by which the facts causing or contributing to such conditions may be investigated and other appropriate action taken when such investigation indicates probable violations of state or federal criminal laws. Now, therefore

Be it enacted by the Legislature of Louisiana:

Section 1. Part III-A of Chapter 8 of Title 23 of the Louisiana Revised Statutes of 1950, comprising R.S. 23:880.1 through R.S. 23:880.18, both inclusive, is hereby enacted to read as follows:

**PART III-A. LABOR-MANAGEMENT  
COMMISSION OF INQUIRY**

**§ 880.1. Labor-Management Commission of Inquiry; creation, vacancies, domicile**

The Labor-Management Commission of Inquiry is created as a permanent commission administratively, with the powers of inquiry hereinafter set forth only to be exercised on an ad hoc basis as hereinafter provided. The commission shall be composed of nine members who shall be appointed by the governor and who shall serve at the pleasure of the governor. Three of the members shall be appointed from among the representatives of organized labor in Louisiana, three from industry located within

Louisiana and three shall be Louisiana residents and representatives of the public generally. Any vacancy for any cause shall be filled by appointment by the governor in the same manner as above stated. Any temporary vacancy, including recusation of any member in any investigation, may be filled by the governor on an ad hoc basis.

The domicile of the commission shall be in the city of Baton Rouge, but meetings may be held at any place within the state.

#### § 880.2. Officers of commission; secretary

The governor shall designate the chairman and vice-chairman, who shall be members of the commission. The governor's executive counsel shall serve as secretary to the commission and shall be the official custodian of all records of the commission, and in proper cases shall authenticate and certify to the accuracy thereof. He shall perform such other functions as are assigned by the commission.

#### § 880.3. Compensation of members

The members of the commission shall receive no salary but each shall be paid a per diem of fifty dollars for each day of actual attendance at meetings of the commission and shall be paid at the rate of ten cents per mile for travel expenses incurred while on business for the commission.

#### § 880.4. Quorum; vote necessary for actions

A majority of the members of the commission shall constitute a quorum. The affirmative vote of five members of the commission shall be necessary for the commission to take any action.

#### § 880.5. Referral of matters to commission by governor

Whenever, in the opinion of the governor, there is serious and substantial indication or there are widespread allegations that there is or may be widespread or continuing violations of existing criminal laws of the United States or of the state of Louisiana affecting in a significant manner labor-management relations in one or more areas of the state and that, as a result thereof, there exists a serious threat to the economic well-being of the affected area or the state as a whole, he may refer the matter to the commission in writing for such action as it is herein-after authorized to take.

§ 880.6. Public hearings, jurisdiction of commission

A. Whenever the governor refers any matter to the commission, it shall, as expeditiously as practicable, investigate and hold hearings at which it shall receive testimony and documentary evidence, or either of them, and it shall ascertain the facts surrounding or pertaining to and shall make findings with respect to any actual or probable violations of the criminal laws of this state or of the United States which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations. The power, authority or jurisdiction of the commission in the conduct of any investigation and also during the course of any executive session or public hearing held by it shall be investigatory and fact finding only and shall be limited to matters which have been referred to it by the governor and which are or may be violations of the criminal laws of the United States or of this state which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations.

B. The commission shall have no power, authority or jurisdiction to investigate, hold hearings or seek to ascertain the facts or make any reports or recommendations

on any of the strictly civil aspects of any labor problem or dispute, but inquiry into alleged criminal acts shall not be improper because recital thereof may reflect upon some civil aspects thereof, and its power, authority or jurisdiction shall in no case extend to (1) any matters which is solely an "unfair labor practice" or an "unfair employment practice" or a legitimate labor dispute under the provisions of any federal or state law; or (2) any matter which relates to legitimate economic issues arising between labor and management or the manner in which such labor practices or economic issues are to be settled between the parties, whether by negotiation, arbitration, lockout or strike; or (3) any matter which relates solely to the internal affairs of labor organizations, including but not necessarily restricted to membership policies, election procedures, membership rights and like matters; or (4) any alleged acts of violence or threats of violence or so-called "mass picketing," or like conduct by either an employer or a union, which is not related to bribery or extortion, as defined by law, but which is related only to an organizational objective of a labor union or which is related only to furthering the interests of one side or the other in a "labor dispute," as that term is defined by federal or state law, such conduct being already regulated by and subject to the police power of the state, exercised through such agencies as the Division of State Police; or (5) any matter which relates solely to the internal affairs of any business organization, including but not necessarily restricted to its labor and business policy and general operations, or (6) any matters which constitute a combination of any two or more of these. In addition, the commission shall have no power, authority or jurisdiction to file, intervene in or in any manner participate in any civil judicial proceedings, except for the purpose of seeking the enforcement of a subpoena issued by it in accordance with the provisions of this Part, or except for the institution of

contempt proceedings as provided in this Part or except when the commission has been made a defendant in any civil suit.

C. Upon the request of the governor, the commission may assign all or part of its investigatory forces to the State Police to assist them in investigating any violations or probable violations of law and in apprehending all persons engaged in violation of law. During such assignment such investigators shall be under the supervision of the Director of the Department of Public Safety and have all the power and authority of other members of the State Police.

D. All public officials, personnel, employees and agents of all boards, commissions, departments and agencies of the state and of the political subdivisions of the state shall cooperate fully with the commission, to the end that it may effectively and comprehensively carry out its functions and duties.

**§ 880.7. Findings; recommendations to governor; criminal charges; interim reports**

A. Upon the completion of its investigations and after public hearing the commission shall make and publicize its findings with respect to the question whether or not there is probable cause to believe that there are or have been violations of any criminal law or laws of the United States or of the state of Louisiana arising out of or in connection with or as a result of the matter which is the subject of the investigation. The commission shall have no authority to and it shall make no binding adjudication with respect to such violation or violations; however, it may, in its discretion, include in its findings the conclusions of the commission as to specific individuals or as to the general situation, or as to both, and it may make such recommen-

dations for action to the governor as it deems appropriate. Copies of its report shall be immediately furnished to the governor, the lieutenant governor, the attorney-general and the legislature. No findings, conclusions, recommendations or reports of the commission may be used as prima facie or presumptive evidence of the guilt or innocence of any person in any court of law.

B. If the commission finds that there is probable cause to believe that there has been a violation of any criminal law of the United States or of this state and that such violation arises out of or in connection with or as a result of a problem or dispute in the field of labor-management relations, it shall report its findings and recommendations to the proper federal and state authorities, or either of them, charged with the responsibility for prosecution of criminal offenses. In addition, when directed to do so by the commission, the chairman shall file appropriate charges with the state and federal authorities having jurisdiction.

C. The commission shall make interim reports of its findings to the governor at such times as the commission or the governor may deem desirable.

D. With respect to any of its findings, the commission may request the governor to refer the matter to the attorney general asking that he exercise the full authority conferred by Article VII, Section 56 of the Constitution in causing criminal prosecutions to be initiated in accordance with law.

#### § 880.8. Powers of commission

In order to carry out the functions vested in it the commission may:

- (1) Adopt, amend, publish and enforce such rules

and regulations, not inconsistent with the provisions of this Part, as it deems necessary to fully effectuate the purposes for which it is created.

(2) Employ and fix the duties and compensation of such attorneys, investigators, staff personnel and other persons and make such other expenditures as it finds necessary to accomplish the purposes of this Part; provided that all salaries and compensation fixed by the commission shall be approved by the governor.

(3) Administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation and require the production of books, records, documents or other evidence deemed relevant or material to any executive session or public hearing held or deposition taken by the commission, but only at such executive session, public hearing or at the time of taking the deposition. The power herein granted to issue subpoenas and compel attendance of witnesses and the production of books, records, documents or other evidence shall be exercised in accordance with the provisions of Section 880.9 of this Part.

(4) Order testimony to be taken by deposition in cases where the commission determines that a witness is incapacitated, and by virtue thereof, unable to attend the hearing or to appear in person before the commission during the course of an executive session or a public hearing, or is outside the boundaries of the state of Louisiana. Such depositions may be taken before any person designated by the commission who is authorized to administer oaths. Unless otherwise ordered by the commission, such depositions shall be filed at the public hearing and be made part of the record. Testimony by deposition may be taken within or without the state. If taken within the state subpoena

may issue from the commission compelling attendance and production of records. If taken without the state, the commission may apply to the district court having jurisdiction over the area where the commission is holding an executive session or public hearing, or to the district court in and for the parish of East Baton Rouge, for an order directing the taking of the deposition, in the manner provided by law for the taking of foreign depositions in judicial proceedings.

Testimony taken by deposition shall be reduced to writing by the person taking the deposition, or under his direction, and shall be subscribed by the deponent.

(5) Do and perform any other things necessary to accomplish the purposes for which it is created.

§ 880.9. Service of subpoenas; returns; failure to comply; contempt of commission

A. Subpoenas issued under authority of Paragraph (3) of Section 880.8 of this Part shall be served by domiciliary or personal service and may be served by any sheriff, deputy sheriff or employee designated by the commission. Domiciliary service shall be made by leaving the subpoena at the dwelling house or usual abode of the witness, with a person of suitable age and discretion residing therein as a member of the domiciliary establishment of the witness, or at any place where the business of the witness is regularly conducted, with a person of suitable age and discretion there employed. Subpoenas for the production of documents shall be served in a similar manner. The person making the service of any subpoena shall make a return thereon, setting forth the date, place, type of service and sufficient other data to show service in compliance with this Section. The return shall be signed and promptly returned to the commission.

B. (1) In the event any person fails or refuses to

obey a subpoena issued in accordance with the provisions of this Part, the commission may present its petition to any state district court within the jurisdiction of which the hearing is held or within the jurisdiction of which the person is found or resides or has his principal place of business, setting forth the facts. The court then shall have the power to compel such person to appear before the commission and give testimony or produce evidence as ordered. Any failure to obey such an order of the court may be punished by the court issuing the same as a contempt thereof. In addition, if any person commits any act which is contemptuous of any authority vested in the commission or of any procedure taken by the commission in conformity with the powers vested in it by the provisions of this Part, the commission may present its petition, setting forth the facts, to any state district court within the jurisdiction of which the hearing is held or within the jurisdiction of which the person is found or resides or has his principal place of business. Upon a finding of guilt, such person shall be adjudged in contempt of the commission and shall be punished by the court as a contempt of court.

(2) Contempt of the commission shall include but shall not be limited to any of the following acts:

(a) Contumacious failure to comply with a subpoena to appear before the commission, proof of service of which appears of record;

(b) Contumacious violation of an order excluding or separating a witness;

(c) Refusal to take the oath or affirmation as a witness, or refusal of a witness to answer a relevant question when ordered to do so by the commission, or refusal to answer any other question when granted the immunity conferred by Section 880.13 of this Part.

(d) Contumacious, insolvent or disorderly behavior toward the commission, any member thereof or its attorney during the course of any executive session or public hearing, which tends to interrupt or interfere with the business of the commission or to impair its dignity or respect for its authority;

(e) Breach of the peace, boisterous conduct or violent disturbance tending to interrupt or interfere with the business of the commission or to impair its dignity or respect for its authority;

(f) Use of insulting, abusive or discourteous language by an attorney or other person at any hearing or in a document filed with the commission.

C. The chairman or other presiding officer may punish breaches of order or of decorum by censure or by exclusion from the hearing, or by both.

**§ 880.10. Rights of witnesses; right to counsel**

A. No person may be required to appear or to testify at any executive session or public hearing held by the commission or give a deposition unless a copy of this Part and a general statement of the subject of the investigation has been served upon him prior to the time when he is required to appear or to give a deposition.

Provided, however, that in the event a witness objects to a question or a series thereof or to the subpoena on the ground that he has not been given sufficient information as to the subject of the investigation, such objection shall be submitted to the commission, and in the event that the commission determines that the objection has merit, the commission shall inform the witness adequately as to the purpose of the investigation and shall afford the witness reasonable additional time within which to prepare for the hearing. If the commission determines by majority vote

that the objection is without merit, such ruling shall be final, and the witness shall be ordered to answer the questions of the commission or to comply with the subpoena. If the witness fails or refuses to comply with the order of the commission or fails or refuses to comply with the order of the commission after the lapse of such additional time as the commission may have granted him within which to comply after further advising him of the nature of the inquiry, the commission shall exercise its powers set forth in Section 880.9 of this Part.

B. A witness summoned to appear before the commission shall have the right to be accompanied by counsel, who may advise him of his rights, subject to such reasonable limitations as the commission may impose in order to prevent obstruction of or interference with the orderly conduct of the hearing. Counsel for any witness who testifies at an executive session or at a public hearing may question the witness he accompanies concerning relevant matters. In no event shall counsel for any witness have any right to examine or cross-examine any other witness but he may submit to the commission proposed questions to be asked of any other witness appearing before the commission, and the commission shall ask the witness such of the questions as it deems to be appropriate to its inquiry.

#### § 880.11. Witness fees

Witnesses summoned to appear before the commission shall be paid the same fees and mileage as are allowed by law for witnesses in criminal cases.

#### § 880.12. Evidence and testimony at executive and public sessions; protection of witnesses; penalties

A. The commission shall base its findings and reports only upon evidence and testimony given at public hearings. Prior to and at any time during or subsequent to the conduct of a public hearing the commission may go into execu-

tive session. It shall go into executive session upon the request of any member of the commission who states that in his opinion evidence or testimony being given or to be given at a public hearing may tend to degrade, defame or incriminate any person. In such executive session it shall afford the person who might be degraded, defamed or incriminated an opportunity to appear and be heard in the executive session, with a reasonable number of additional witnesses in his behalf requested by him, before deciding to receive such evidence or testimony in public hearing. If the commission should decide that such evidence or testimony should be heard in a public hearing, the evidence must be offered and filed anew in the public hearing and the testimony of the witness must actually be given at the public hearing, both without reference to the fact that the commission previously had viewed the evidence in executive session or heard the same or other testimony of the witness in executive session.

Should the commission determine to receive such evidence or testimony in public hearing, the person who might be degraded, defamed or incriminated thereby shall be given an opportunity at the public hearing to appear as a voluntary witness, or to file a sworn statement in his own behalf and submit brief, pertinent, sworn statements of others, or to submit to the commission a list of such persons as he may wish to have subpoenaed as additional witnesses. The actual issuance of any additional subpoenas shall be in the discretion of the commission.

B: It shall be a misdemeanor for any member of the commission, its counsel or employees, to make public any evidence or testimony taken at a private investigation or at any executive session. Whoever violates this Subsection shall be fined not more than one thousand dollars or be imprisoned for not more than one year, or both.

C. Any person whose name is mentioned or who is specifically identified and who believes that testimony or other evidence given at a public hearing or comment made by any member of the commission or its counsel at such a hearing tends to defame him or otherwise adversely affect his reputation shall have the right either to appear personally before the commission and testify in his own behalf as to matters relevant to the testimony or other evidence complained of or, in the alternative at the option of the commission, to file a statement of facts under oath relating solely to matters relevant to the testimony or other evidence complained of, which statement shall be incorporated in the record of the investigatory proceeding.

#### § 880.13. Immunity of witnesses

Whenever in the judgment of the commission the testimony of any witness, or deposition thereof, or the production of books, papers or other evidence by any witness, in any matter pending before it, is necessary to the public interest and the proper discharge by the commission of its duties imposed by this Part, the commission may make application to the district court having jurisdiction over the place where the hearing is being held, or to the district court in and for the parish of East Baton Rouge, requesting that the witness be instructed to testify, depose or produce evidence subject to the provisions of this Part, and upon order of the court such witness shall not be excused from testifying or deposing, or from producing books, papers or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no such witness so ordered by the court shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-

incrimination, to testify, depose or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding against him in any court except for a prosecution for perjury or contempt committed while giving testimony, or while deposing or producing evidence under compulsion as provided herein.

**§ 880.14. Misdemeanors and penalties**

**Whoever:**

(1) Uses or attempts to use violence, force or threats, with the intent to influence the testimony or conduct of any witness or person about to be called as a witness at any hearing before the commission, whether in executive session or a public hearing, or in connection with any investigation ordered by the commission; or

(2) Uses or attempts to use violence, force or threats to the person, his family, or property of any witness on account of his having attended any session or hearing or investigation, or on account of his testifying or having testified with respect to any pending matter; or

(3) With intent to avoid, evade, prevent or obstruct compliance, wholly or partially, with any subpoena issued by the commission, removes from any place, conceals, destroys, mutilates, alters or by any means falsifies any documentary material subject to such subpoena; or

(4) By force or threats, or by wilful acts prevents, obstructs, impedes or interferes with, or attempts to prevent, obstruct, impede or interfere with the due exercise of rights or the performance by the commission of its duties as imposed by this Part shall be guilty of a misdemeanor and upon conviction shall be fined not more than two thousand dollars or be imprisoned for not more than two years, or both.

**§ 880.15. Records of hearings**

A. A complete and accurate record shall be kept of each public hearing, and any witness shall be entitled to a copy of his testimony at such hearing, at his own expense.

B. The records of any public hearing held by the commission, when properly authenticated and attested by the secretary of the commission, are public records and shall be subject to the provisions of Chapter 1 of Title 44 of the Louisiana Revised Statutes of 1950, as amended.

**§ 880.16. Immunity of commission members and employees**

No action, proceeding or decision of the commission, or any of its members or employees in the exercise of its duties, functions and obligations in conformity with the provisions of this Part, shall subject any member or employee thereof to any suit or liability for damages in connection therewith.

**§ 880.17. Budget unit of state; reversion of funds**

The commission shall be a separate budget unit of this state, as defined by law, and as such shall be subject to the provisions of Title 39 of the Louisiana Revised Statutes of 1950, as amended, and all other laws relating or applicable to budget units. Any funds appropriated to the commission which remain unexpended and unencumbered at the close of any fiscal year shall be remitted to the state general fund in accordance with law.

**§ 880.18. Liberal construction; exclusion from Administrative Procedure Act**

The provisions of this Part shall be liberally construed to effectuate the purpose for which it was enacted. The provisions of Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950, as amended, shall not apply to the Labor-Management Commission of Inquiry.

Section 2. The sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars, or so much thereof as may be necessary, is hereby appropriated out of the General Fund of the state of Louisiana for the fiscal year 1967-1968 to the Labor-Management Commission of Inquiry, to be used by said Commission for operations in connection with the purposes for which it is created.

Section 3. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not effect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

Section 4. All laws or parts of laws in conflict here-with are hereby repealed.

Section 5. The necessity for the immediate passage of this Act having been certified by the governor to the legislature while in session, in accordance with Section 27 of Article III of the Constitution of Louisiana, this Act shall become effective immediately upon approval by the governor.

/s/ **VAIL M. DELONY**  
**SPEAKER OF THE HOUSE OF**  
**REPRESENTATIVES**

/s/ **C. T. AYCOCK**  
**LIEUTENANT GOVERNOR AND**  
**PRESIDENT OF THE SENATE**

/s/ **JOHN J. McKEITHEN**  
**GOVERNOR OF THE**  
**STATE OF LOUISIANA**

APPROVED: July 22, 1967, at 10:52 A.M.





OCT 14 1968

No. 548

JOHN F. BAVIS, CLERK

In the  
Supreme Court of the United States

OCTOBER TERM, 1968

RODERICK JENKINS,

Appellant,

v.

JOHN JULIAN McKEITHEN, CECIL MORGAN,  
PAUL M. HEBERT, FLOYD C. BOSWELL,  
RALPH F. HOWE, A. R. JOHNSON, III,  
AND BURT S. TURNER,

Appellees.

MOTION TO AFFIRM

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Attorney General,  
State of Louisiana,  
Baton Rouge, Louisiana.

ASHTON L. STEWART,  
Special Assistant Attorney  
General of the State of Louisiana,  
604 Union Federal Building,  
Baton Rouge, Louisiana.

Attorneys for Appellees



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In the  
Supreme Court of the United States

OCTOBER TERM, 1968

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RODERICK JENKINS,

Appellant,

v.

JOHN JULIAN McKEITHEN, CECIL MORGAN,

PAUL M. HEBERT, FLOYD C. BOSWELL,

RALPH F. HOWE, A. R. JOHNSON, III,

AND BURT S. TURNER,

Appellees.

---

On Appeal from United States District Court for the  
Eastern District of Louisiana.

---

**MOTION TO AFFIRM**

---

Appellees John Julian McKeithen, et al, respectfully move the Court, pursuant to Rule 16(1)(c) of the Rules of the Court, to affirm the judgment below and in support thereof would show that the questions on which the decision of this cause depends are so unsubstantial as not to need further argument.

**CITATION TO OPINION BELOW**

The judgment below and the opinion supporting it of June 26, 1968 are reported at 286 F. Supp. 537.

**JURISDICTION**

Jurisdiction of this appeal is founded upon 28

U.S.C. 1253, in that injunctive relief was sought by plaintiff against the enforcement of a statute of the State of Louisiana on the ground that it violates the Constitution of the United States and was denied by a Federal district court of three judges.

### **QUESTION PRESENTED**

Do procedural rules of a commission, whose function is purely investigative and is without authority to adjudicate, violate due process in denying witnesses before it the right of confrontation, assistance of counsel and compulsory process for obtaining witnesses?

### **STATEMENT OF THE CASE**

This action was commenced on March 11, 1968, challenging the constitutionality of Act 2 of the Extraordinary Session of the Legislature of Louisiana of 1967 (R.S. 23:880.1-880.18) which created a commission denominated as the "Labor-Management Commission of Inquiry" to investigate and find facts to violations or possible violations of the criminal laws of the State of Louisiana or of the United States arising out of or in connection with matters in the field of labor-management relations.

The plaintiff claims that he, though he has not been subpoenaed to appear before the Labor-Management Commission of Inquiry, had, as a result of hearings held by that Commission, been charged by the District Attorney of Iberville Parish, Louisiana, under four bills of information, with criminal conspiracy to commit a battery with a dangerous weapon on four

different persons in violation of a criminal statute of the State of Louisiana. He claims these charges are false and that he is not guilty. He alleges that these charges against him came about from improper actions of the Commission. Plaintiff does not attack the criminal statute under which he has been charged, but claims that the statute creating the Labor-Management Commission of Inquiry violates the due process clause of the Fourteenth Amendment in that, in investigations by the Commission, the persons being investigated are denied by the statute the right of confrontation, assistance of counsel and compulsory process for obtaining witnesses.

The U. S. District Court for the Eastern District of Louisiana, Baton Rouge Division, convened as a three judge court, and found that this Commission could only investigate and report and could not adjudicate, and then held that *Hannah v. Larche*, 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed. 2d 1307, was decisive on the issue raised by plaintiff. The Court observed that the Louisiana Legislature had drafted the rules of procedure for the Commission with that case in mind, and, accordingly, dismissed the plaintiff's suit.

Notice of Appeal was filed in the Supreme Court of Louisiana on July 2, 1968, and plaintiff's statement as to Jurisdiction was received September 20, 1968.

## ARGUMENT

Statute Creating Commission to Investigate Possible Violations of Criminal Laws, Which Commission Was Merely a Fact-Finding Body and

Could Not Adjudicate, Was Not in Violation of the Due Process Clause of Fourteenth Amendment in Denying Confrontation, Assistance of Counsel and Compulsory Process for Obtaining Witnesses.

According to the preamble of the Act, this Commission of Inquiry was conceived and created to examine the causes for the unprecedented conditions existing in the State of Louisiana in the field of labor-management relations under which, by reason of suspected violations of the State and Federal criminal laws, there had been a shutdown of construction work involving industrial development projects furnishing employment to thousands of persons, that the then present conditions vitally affected the public interest and threatened to disrupt the conduct of normal labor-management relations. It was further stated that, in view of the then presently existing conditions, the public interest required that the causes thereof be investigated on a statewide basis as a supplement to assist activities of the district attorneys, grand juries and other law enforcement officials and agencies of the State of Louisiana and of the United States. The Commission was required to report to the Louisiana Legislature, the Governor, the Lieutenant-Governor and the Attorney General.

The statute granted limited power to the Commission, declaring ". . . it shall be investigatory and fact finding only . . .", and the statute provided that "The commission shall have no authority to and it shall make no binding adjudication . . ."

Inasmuch as the power of this commission was limited by the statute to investigating and reporting and the statute did not authorize the commission to adjudicate on matters affecting the life, liberty or property of the person under investigation, just as the statute which created the Civil Rights Commission before the Court in *Hannah v. Larche*, 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed. 2d 1307, and inasmuch as the rules of procedure for the investigations to be conducted by this commission were identical to those of the Civil Rights Commission, the issues in this case are identical with those in *Hannah*, where the statute was held constitutional, we submit that the questions on which this cause depends are so unsubstantial as not to need further argument.

The constitutionality of this same statute was challenged in the Louisiana Courts in the case of *Martone v. Morgan*, 251 La. 993, 207 So. 2d 770, wherein the plaintiff was represented by the same attorney who represents the plaintiff in this cause. The judgment of the Louisiana Supreme Court in that case is presently pending on appeal in this Court under Docket No. 216, October Term, 1968. The defendants there have filed a Motion to Affirm as here.

**CONCLUSION**

For the foregoing reasons, the judgment appealed should be affirmed.

Respectfully submitted,

**JACK P. F. GREMILLION,**

Attorney General,

State of Louisiana,

Baton Rouge, Louisiana.

**ASHTON L. STEWART,**

Special Assistant Attorney

General of the State of Louisiana,

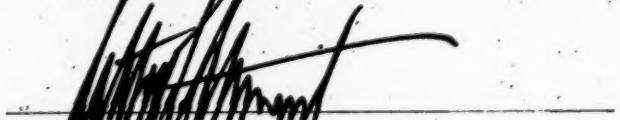
604 Union Federal Building,

Baton Rouge, Louisiana.

## PROOF OF SERVICE

I, Ashton L. Stewart, Special Attorney General of the State of Louisiana, attorney for appellees herein and a member of the bar of the Supreme Court of the United States, hereby certify that on the 10 day of October, 1968, I served a copy of the foregoing motion to affirm on the appellant herein, by mailing said copy in a duly addressed envelope with first class postage prepaid to his attorney of record, J. Minos Simon, Esquire, 1408 Pinhook Road, Post Office Box 52116, OCS, Lafayette, Louisiana 70501.

Baton Rouge, Louisiana, this 10 day of October, 1968.



ASHTON L. STEWART,  
Special Assistant Attorney General  
of the State of Louisiana,  
604 Union Federal Building,  
Baton Rouge, Louisiana 70801.

Attorney for Appellees



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JAN 29 1969

JOHN F. DAVID, CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1968

**No. 548**

**RODERICK JENKINS,**

*Appellant,*

*versus*

**JOHN JULIEN McKEITHEN, ET AL,**

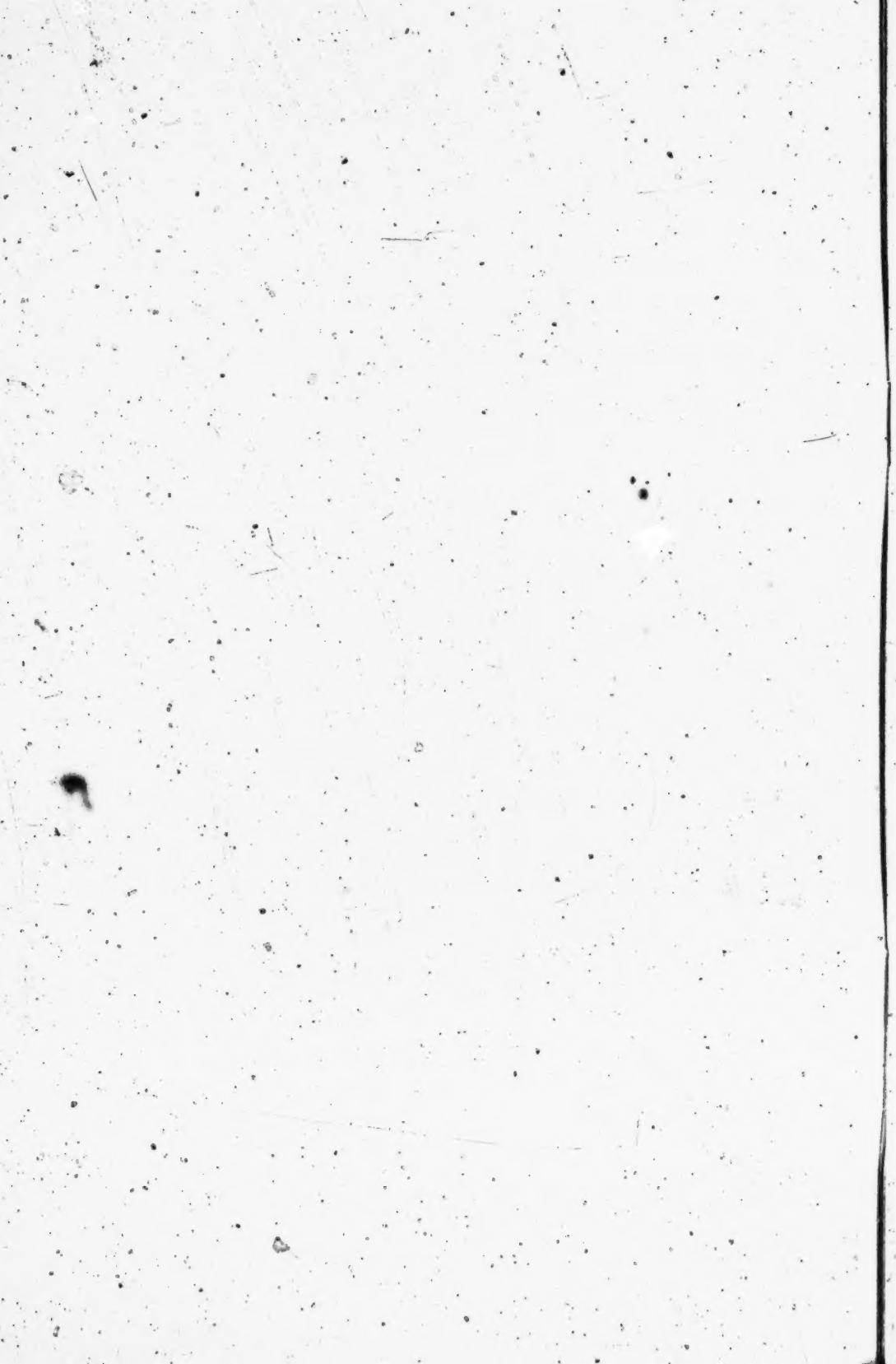
*Appellees.*

On Appeal From The United States District Court,  
Eastern District of Louisiana

**ORIGINAL BRIEF ON BEHALF OF APPELLANT**

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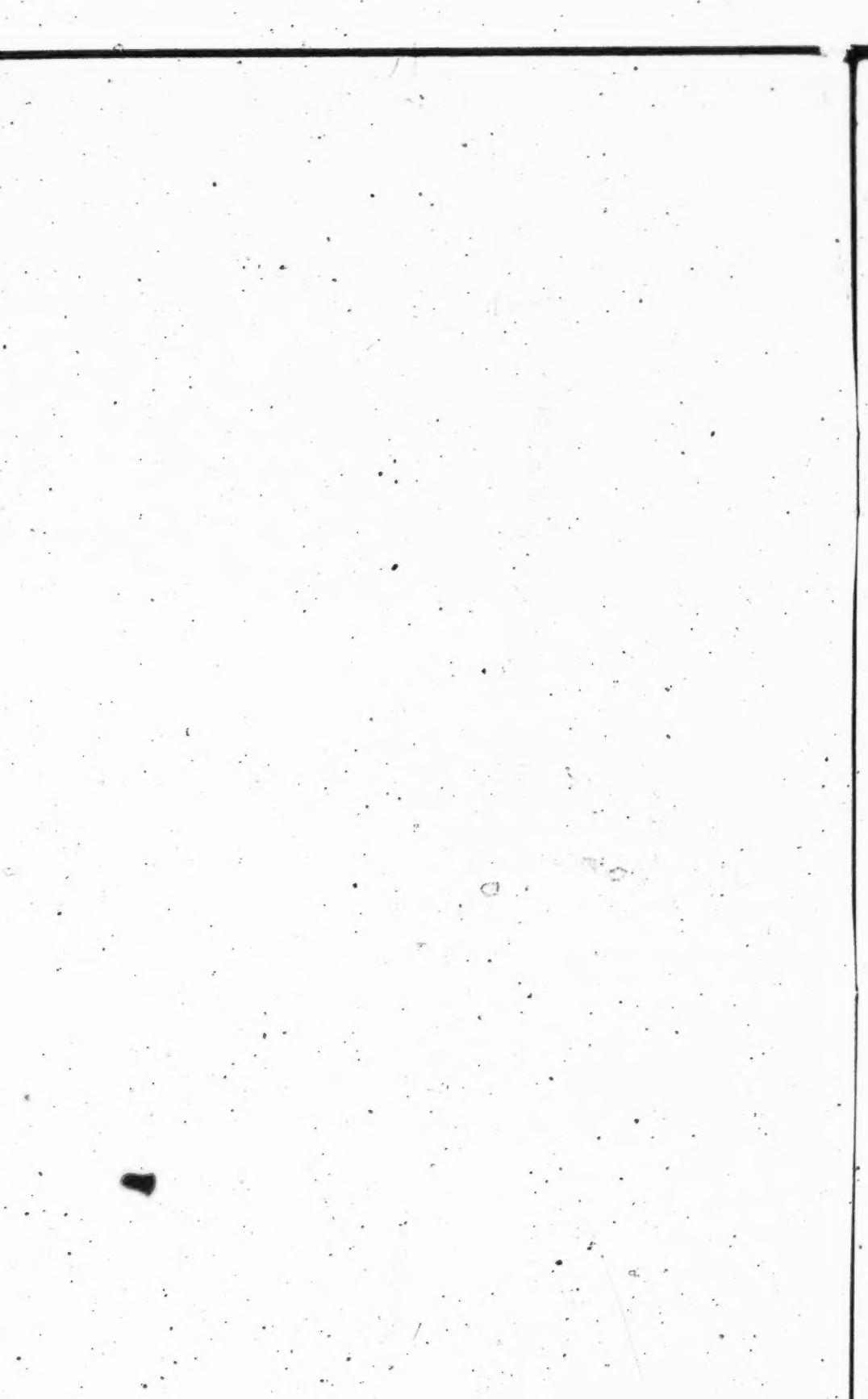
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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1968

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NUMBER 548

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RODERICK JENKINS,

Appellant,

versus

JOHN JULIEN McKEITHEN, ET AL,

Appellees.

---

On Appeal From The United States District Court,  
Eastern District of Louisiana

---

ORIGINAL BRIEF ON BEHALF OF APPELLANT

---

TO THE HONORABLES, THE CHIEF JUSTICE AND  
ASSOCIATE JUSTICES OF THE UNITED  
STATES SUPREME COURT:

Appellant has appealed from the decision of a federal three-judge district court involving the constitutionality of a statute of the State of Louisiana, which is assailed by him as being unconstitutional as a matter of law and as a matter of administration.

**OPINION BELOW**

The opinion of the court is officially reported as follows: *Jenkins v. McKeithen*, 286 F.Supp. 537. A

copy of the opinion is reported in the Single Appendix at R 87.

### **JURISDICTION**

The appeal is from a judgment entered by a three-judge United States District Court dismissing appellant's lawsuit which prayed for the convening of a statutory three-judge district court and for interlocutory and permanent injunctions against the enforcement of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967. The original opinion of the court was assigned on June 26, 1968, and a formal judgment was signed on July 2, 1968. Notice of appeal was given on May 9, 1968. Under the provisions of Title 28, United States Code, Sections 1253 and 2101 (c), this court has jurisdiction on direct appeal to review the judgment complained of by appellant.

### **STATE STATUTE IN CONTROVERSY**

The state statute in controversy is officially known as Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967. Because of its length, its text is reproduced in the appendix hereof, infra P.A 34, R 102. It is reported in West's Louisiana Revised Statutes Annotated, Volume 16, Page 9 of the 1967 cumulative annual pocket part, officially cited as R.S. 23:880.1-880.18.

## QUESTIONS PRESENTED

1. Is a state statute valid, which by its terms creates an executive trial agency, whose sole function is to conduct public hearings for the purpose of making "findings" (a) that state or federal crimes have been committed, and (b) that named individuals are guilty of the commission of such crimes; which "findings" must be "publicized," as part of a criminal process, where persons suspected or called as witnesses are denied (1) the right to examine or cross-examine any witness who may testify for or against him, (2) the right to the effective assistance of counsel, (3) the right of confrontation, (4) the right to compulsory process for the attendance of witnesses, (5) the right to effective and meaningful rules of evidence, (6) the right to meaningful and definable standards of guilt or innocence and (7) the right of appeal?
2. Do the acts and deeds of state officials in willfully applying the provisions of said state statute in a discriminatory manner against appellant and members of a labor union for the sole purpose of destroying said labor union and discrediting its members, including the acts of filing knowingly false criminal charges against appellant and other labor union members and the plotting to kill certain officials of said labor union, deprive appellant and those similarly situated of constitutional due process and equal protection of laws guaranteed by the Fourteenth Amendment to the United States Constitution and of free-

dom of speech and association guaranteed by the First Amendment to the United States Constitution?

### CONCISE STATEMENT OF THE CASE

The legal issues on this appeal are framed by the pleadings of appellant's lawsuit. (R 1, 24, 33) In his lawsuit appellant charges that the state statute in controversy, as a matter of law and as administered, deprives him of privileges and immunities as a citizen of the United States, of due process and equal protection of laws, guaranteed by the Fourteenth Amendment to the United States Constitution. The burden of his complaint is that the state statute creates an executive trial agency, known as the Labor-Management Commission of Inquiry. Its sole function is to conduct public hearings in the field of labor-management relations for the purpose of making "findings" concerning the existence of state or federal crimes and to identify the individuals who are guilty of the commission of such crimes. Under the terms of said statute these "findings" of guilt of law violations must be publicized. After this state agency has found named persons guilty of having committed crimes, and after such "findings" have been duly "publicized," it then becomes the mandatory duty of said state agency to "report its findings and recommendations to the proper federal and state authorities, or either of them, charged with the responsibility for prosecution of criminal offenses." In addition, when directed to do so by the Commission, "the Chairman shall file appropriate charges with the state and federal authorities having jurisdiction."

Section 880.7 (b) (R 108, A 41) Thus the public hearing, the findings of guilt, and the publicizing of these findings are part of the criminal process.

Appellant further charges in his petition that a person subpoenaed before this trial agency as a potential accused or as a witness is denied the right to the effective assistance of counsel, to examine and cross-examine the witnesses against him, to compulsory process for the attendance of witnesses in his behalf, to the benefit of effective and meaningful rules of evidence and to the benefit of meaningful and definable standards of guilt or innocence. Thus he is denied the rudiments of constitutional due process and equal protection of laws.

Appellant further charges in his lawsuit that the named defendants, their agents, representatives and employees and those acting in concert with them, in connection with the administration of this State Act, have singled out appellant and members of Teamsters Local Union No. 5 as a special class of persons for repressive, willful and punitive action, solely because they are members of said labor union for the purpose of destroying said labor union. The complaint further establishes that the conspiracy alleged includes actions of state officials of willfully scandalizing members of said labor union, of knowingly filing false criminal charges against members of said labor union and of exacting excessive bail bonds in connection with such false charges, of intimidating other public officials into carrying out such tyrannical aims and of otherwise bringing to bear

the entire police power of the state in furtherance of the conspiracy. By supplemental complaint (R 24, 33) it is alleged, *inter alia*, that officials of this state agency have singled out certain officials of said labor union for murder and this charge is supported by an affidavit of a former undercover agent of said state agency. (R 35)

Based upon these substantial averments appellant prayed for injunctive relief. His application for a hearing as to his request for interlocutory injunction was refused. Instead, the three-judge district court conducted a hearing only as to defendants' motion to dismiss. After oral argument of counsel the statutory three-judge district court maintained defendants' motion and summarily dismissed appellant's lawsuit.

#### **SUMMARY OF ARGUMENT**

The state statute in controversy establishes an executive trial agency which exercises an accusatory function exclusively. Its duty is to find that named individuals are responsible for criminal law violations. It must advertise such findings, and its findings serve as part of the process of criminal prosecution. A person accused or called as a witness is denied (1) the right to examine or cross-examine any witness who may testify for or against him, (2) the right to the effective assistance of counsel, (3) the right of confrontation, (4) the right to compulsory process for the attendance of witnesses, (5) the right to effective and meaningful rules of evidence, (6) the right to meaningful and definable standards of guilt or innocence.

cence, and (7) the right of appeal. In such a context the state statute violates the due process and equal protection clause of the Fourteenth Amendment to the United States Constitution.

In the process of administering the provisions of this state statute, state officials, while acting in concert together and with others, have singled out members of Teamsters Local Union No. 5 of Baton Rouge, Louisiana, including appellant, as a special class of persons for repressive, willful and punitive action solely because they are members of said labor union. In furtherance of the conspiracy they have filed knowingly false criminal charges against these union members, including appellant. They have bribed and attempted to bribe witnesses to give incriminating evidence against these labor union members, including appellant. They have threatened and continue to threaten to knowingly use perjured evidence against appellant and others similarly situated. They have intimidated public officials into carrying out their evil intentions and have plotted the murder of certain union officials. They have threatened with criminal prosecution for perjury in state courts any person who would give evidence in federal court in support of appellant's allegations of conspiracy mentioned in his complaint. Moreover, said state officials in fact did file in state court a formal charge of perjury (A. 55) against one George Wyatt for having subscribed to an affidavit (R 35) filed in the United States District Court at Baton Rouge, Louisiana, in connection with appellant's supplemental complaint. Such abrasive state actions deny appellant and those

similarly situated of due process and equal protection as secured by the Fourteenth Amendment to the United States Constitution and of the First Amendment privilege of belonging to the labor union.

### **ARGUMENT**

The offensive nature and overreaching quality of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967 (R.S. 23:880.1 - 880.18) (R 102, A 34) can be accurately appraised only if the nature and function of the Commission of Inquiry which it created are subjected to close scrutiny. The structure of its power is a good beginning point.

The Commission of Inquiry is an executive trial agency. Its powers of inquiry are to be exercised only on an ad hoc basis, Section 880.1, (R 103, A 36) and then only when, in the opinion of the Governor alone, that power should be exercised. Section 880.5. (R 105, A 37). Thus, the reins of control are vested exclusively in the already powerful hands of the Governor of the State of Louisiana and the standards of judgment by which he is to be guided in unleashing the consummate power of depredation inherent in the Commission are so vague and indefinite as to offer no legally definable guidelines whatever, with the result that the Governor thereby is invested with arbitrary and capricious powers to injure and damage or praise and compliment accordingly as his whim may induce him to act.

The Commission of Inquiry consists of nine (9) members appointed by the Governor. Section 880.1. (R 103, A 36). Moreover, the Governor appoints the chairman and vice-chairman. Section 880.2. (R 104; A 37). A majority of five (5) controls. Section 880.4. (R 104, A 37).

All public officials, personnel, employees and agents of all boards, commissions, departments and agencies of the State and of the political subdivisions of the State are mobilized and impressed into cooperative service with the Commission to the end of effectuating its function and duties by the provisions of 880.6 (d). (R 107, A 40). Moreover, on the simple request of the Governor the entire investigatory forces of the Commission of Inquiry are assignable to the State Police and during that assignment the assignees "have all the power and authority of other members of the State Police." Section 880.6 (c). (R 107, A 40). Thus, all the power and might of the State of Louisiana are harnessed to the executive juggernaut.

This great arsenal of power is concentrated in a narrow functional chamber aimed at conducting public trials concerning criminal law violations. Significantly, the Commission of Inquiry does not conduct inquiry which is related to or in furtherance of a legitimate task of the Legislature. In fact, it does not report to the Legislature. It is not a fact-finding agency of the Legislature or even of the Executive, such as permissibly may be created for the purpose of gathering facts to be used by the Legislature or the Ex-

ecutive in formulating *remedial legislation*. To the contrary, it is prohibited from doing this forasmuch as it is powerless to "hold hearings or seek to ascertain the facts or make any reports or recommendations on any of the strictly civil aspects of labor problems or disputes." Section 880.6 (b). (R 105, A 39). It is an executive trial agency which receives evidence to ascertain the existence of "facts surrounding or pertinent to \* \* \* any actual or probable violations of the criminal laws of this State or of the United States which relate to; arise out of or are connected with problems or disputes in the field of labor-management relations." Section 880.6 (a). (R 105, A 38).

After conducting its investigations and hearings, it is the *mandatory duty* of this Commission to make findings of fact limited to two (2) objectives: (a) the violations of any criminal law or laws of the United States or of the State of Louisiana, and (b) the guilt or innocence of specific individuals as to such criminal law violations. Section 880.7 (a). (R 107, A 41). Not only is it the mandatory duty of the Commission to make such "findings" but the Commission must "publicize" these "findings". Additionally, no such "findings" can be made and "publicized" unless it is preceded by a "public hearing". Section 880.7 (a). (R 107, A 41). Thus, the legislative intent to "publicly" condemn is unmistakably clear. After the Commission has made public "findings" that certain citizens are criminals it then becomes its mandatory duty to "report its findings and recommendations to the proper federal and state au-

thorities, or either of them, charged with the responsibility for prosecution of criminal offenses." In addition, when directed to do so by the Commission, "the chairman shall file appropriate charges with the state and federal authorities having jurisdiction. Section 880.7 (b). (R 108, A 41).

This Commission is empowered to adopt rules and regulations controlling its function, to employ necessary personnel, to administer oaths, to issue subpoenas for the personal appearance of witnesses and for the production of books and to take depositions anywhere in the United States. Section 880.8. (R 108, A 42). Subpoenas may be served by anyone designated by the Commission and the Commission may apply to the courts to compel attendance of witnesses and it is empowered to compel obedience to its will by instituting contempt proceedings. Section 880.9. (R 110, A 44).

Arrayed against such an ominous police structure is your appellant and persons similarly situated. One called as a witness may be a potential suspect. Nevertheless, neither prosecuting witness nor victim has a right to examine or cross-examine any witness who may testify for or against him. There is no right to

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<sup>1</sup>Section 880.10(b) expressly provides that:

*"In no event shall counsel for any witness have any right to examine or cross-examine any other witness*

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the effective assistance of counsel,<sup>2</sup> no right of confrontation, no right to compulsory process for the attendance of witnesses. There are no effective and meaningful rules of evidence, no meaningful and definable standards of guilt or innocence and no right of appeal.

The Commission may receive any type evidence, hearsay or otherwise. Furthermore, no matter how willful, how malicious, how irresponsible the conduct of the employees, agents, representatives and officials of the Commission may be, and no matter how grave the resultant injury, by virtue of the provisions of Section 880.16 (R 116, A 52), the doors of all the courts of Louisiana are shut against its victims for redress of grievances, including injury to person and reputation. Such is the nature and function of the Commission of Inquiry created by Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967.

#### **ACT PATENTLY UNCONSTITUTIONAL**

The validity of the provision of any statute must be tested not by its labels or title but on the basis of

<sup>2</sup>While Section 880.10(b) grants to a witness the right to be accompanied by counsel, who may advise him, such right to counsel is made wholly ineffective, because counsel's act of advising the witness of his rights is "subject to such reasonable limitations as the commission may impose in order to prevent obstruction of or interference with the orderly conduct of the hearing." In fact, the insistence of counsel on his advocacy itself may be construed as disorderly behavior toward the commission and thus subject counsel to a contempt citation pursuant to the provisions of 880.0(b)(2).

the terms employed. *Connerly v. General Construction Co.*, (1926) 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322. The terms employed by the Act under consideration unmistakably characterize and empower the Commission of Inquiry as an accusatory body charged with the exclusive responsibility of finding the existence of criminal law violations and of naming individuals who are guilty of these criminal violations. That is its *raison d'etre*. It can function only under the glare of public view. While it has power to hold executive hearings, evidence adduced during such hearings cannot form the basis of its "findings." Such evidence must be heard anew in open hearings before it can be considered by the Commission in making its "findings." Section 880.12 (a). (R 113, A 48). In effect, therefore, the Commission's sole function is to conduct what is tantamount to a preliminary hearing as used in the federal criminal law system or a preliminary examination as used in the state criminal law system. Moreover, while the incriminating and defamatory evidence is being heard, television cameras are grinding away and representatives of the news media are ever present collecting the evidence, sensationalizing it and subsequently disseminating it throughout the State and even to the far reaches of the nation with the result that the entire population of the State sits as a jury to determine the guilt or innocence of the accused. In such a context the guilty verdict of the Commission is almost anti-climatic. Nevertheless, the accused stands formally adjudged a criminal. He is thereby forever stigmatized with all of the horrendous consequences of the stigma.

His prior good reputation in the community is reduced to rubbish. He is now a pariah, to be shunned. He is an object of derision. His wife, his children, his parents and his relatives must share his shame. A bearing of self-respect and personal dignity now is publicly judged as morbid arrogance or personal depravity. The stigma is like a communicable disease. Those who associate with him will contract the stigma. He is no longer a suitable candidate for employment. Prudent employers dare not risk contracting the disease which infects him. Thus, he suffers a great impairment of employment opportunities.

He has arrived at this disastrous station in life not because he is guilty of any wrongdoing. His abysmally servile and scandalous status exists because the State of Louisiana has deprived him of the opportunity to defend himself, to show the falsity of the dastardly charges made against him. He stands thus injured because in the face of the calumny which engulfs him he was not granted the right to confront his accusers, to have the effective assistance of counsel, to examine and cross-examine the witnesses against him, to bring witnesses to testify on his behalf. He was assassinated by weapons rejected as rank contrabands by all civilized societies, namely, opinion evidence, innuendos, and hearsay testimony, because no effective and meaningful rules of evidence were applied to control the scope and nature of the evidence against him. His guilt was based on no meaningful and definable standards of guilt or innocence, and thus was the product of caprice and whim. In short,

he is the victim of a classic Inquisition, an ugly re-crudescence of the infamous days of Salem.

Standing thus denuded of personal dignity, defamed in good repute and denied of inalienable rights, he is without meaningful recourse or effective redress. Those officials who have plundered him are immune from civil liability by the very statute which authorized the slaughter. Those whose damaging hearsay evidence scandalized him enjoy the protective shield of quasi-privilege, because they were compelled by the duress of contempt punishment to respond to questions which expressly elicited such hearsay evidence. There is only one possible way out. The gods that be may prevail upon the Chairman of the Commission of Inquiry to administer the coup de grace, i.e., to file criminal charges against him as he is authorized to do by Section 880.7 (b), (R 108, A 41), so that finally the accused may have the opportunity to defend himself, to confront his accusers, to examine and cross-examine them, to bring witnesses to testify on his behalf, to cull the evidence against him by the employment of meaningful rules of evidence and to have his guilt or innocence determined by meaningful and deniable standards. In this manner he stands the chance of being vindicated, of being exonerated, if only he can find a judge or jury who can still impartially evaluate the evidence against him. Should the Chairman of the Commission not be possessed of the charity to administer the coup de grace, then he may still approach the state or federal district attorney on bended knees and beg to be criminally prosecuted so that thereby he may have the op-

portunity to be exonerated, to wash off the contamination of the stigma and erase his eroded image from the public mind, if that is still possible. In other words, he must invite the ignominy of a public trial, the further scourge of criminality and the financial burden of a defense for the opportunity to prove his innocence, to unring the bell of degradation sounded against him, to attempt to right a wrong that is constitutionally impermissible.

Thus by the plain terms of this statute the Commission of Inquiry of Louisiana conducts public trials concerning the existence of crimes and the guilt or innocence of persons in relation to those crimes. Furthermore, this public body determines the criminal liability of persons whom it may find are so involved. Moreover, such a determination or "finding" of criminal liability must be made public. Additionally, these findings of necessity contain a defamatory content. The only authority which this State agency lacks is the power to impose a fine or sentence the guilty person to a term of imprisonment. The lack of that power, however, does not make the adjudication or determination less binding. Nothing is more binding and everlastingly so nor more consummately injurious than a public condemnation formally pronounced after a public hearing by a State agency whose sole mission is to make such a determination.

The apocryphal claim that the state Commission is nothing but an innocent fact-finding agency such as was involved in *Hannah v. Larche* (1960), 363 U.S.

420, 80 S.Ct. 1502, is supported neither by the terms of the state statute in controversy nor by the decision in HANNAH.

There is a marked difference between what is permitted in HANNAH and what is licensed in the instant case. For example, as the court observed in HANNAH, "potentially defamatory, degrading, or incriminating testimony shall be received in *executive session*, and that any person defamed, degraded, or incriminated by such testimony shall have an opportunity to appear voluntarily as a witness and to request the commission to subpoena additional witnesses; that testimony taken in executive session shall be released only upon the consent of the commission." (80 S.Ct at p. 1509). The very contrary is true as to the function of the Commission of Inquiry. For example, the Commission deals *only in incriminating testimony*. *Nothing* heard in executive session may be considered by it in making its findings. Its findings are *based entirely on incriminating evidence* and its findings can relate to *nothing but incriminating testimony*. Of necessity its findings embrace a defamatory content. Further its incriminatory and defamatory findings must be *publicized*. The ultimate objective of the Commission function is to deliver these incriminatory findings to a state or federal authority charged with the responsibility of pursuing criminal prosecutions or to permit and direct its Chairman to institute such criminal prosecution. This is a far cry from the Commission function in HANNAH. In fact, in his concurring opinion Justice Frankfurter states that if the function of the

Commission in HANNAH were equivalent to that of the Commission of Inquiry involved in the instant case, the decision would be the reverse of what it was. Said Justice Frankfurter (80 S.Ct. at p. 1543):

“Were the Commission exercising an accusatory function, were its duty to find that named individuals were responsible for wrongful deprivation of voting rights and to advertise such finding or to serve as part of the process of criminal prosecution, the rigorous protections relevant to criminal prosecutions might well be the controlling starting point for assessing the protection which the Commission's procedure provides.”

This is precisely what the State Commission of Inquiry is. It exercises (a) an accusatory function, (b) its duty is to find that named individuals are responsible for criminal violations, (c) it must advertise such finding, and (d) its finding serves as part of the process of criminal prosecution. Thus, all four conditions which Justice Frankfurter stated would demand the rigorous protections relevant to criminal prosecutions exist and concur in connection with the function of the Commission of Inquiry. This simply means that under the HANNAH decision the state statute is unconstitutional. As Justice Frankfurter observed the objectives and the function of the Commission on Civil Rights involved in HANNAH were completely opposite those involved in the instant case. Following his comments as quoted above Justice Frankfurter continued: (80 S.Ct. at p. 1543)

"The objectives of the Commission on Civil Rights, the purpose of its creation, and its true functioning are quite otherwise. It is not charged with official judgment on individuals nor are its inquiries so directed. The purpose of its investigations is to develop facts upon which legislation may be based. As such, its investigations are directed to those concerns that are the normal impulse to legislation and the basis for it. To impose upon the Commission's investigations the safeguards appropriate to inquiries into individual blameworthiness would be to divert and frustrate its purpose \* \* \*."

The sole purpose of the State Labor-Management Commission of Inquiry is to make a finding of criminal law violations and an official judgment on individuals guilty of them. These judgments have but one function and that is to condemn and stigmatize individuals. Furthermore, these judgments are preliminaries to and a part of the process of criminal prosecution. In such a situation all of the constitutional safeguards appropriate to criminal prosecution must be accorded these individuals. Justice Frankfurter so stated in his concurring opinion in HANNAH:

"In appraising the constitutionally permissive investigative procedures claimed to subject individuals to incrimination or defamation without adequate opportunity for defense, a relevant distinction exists between those proceedings which are preliminaries to official

judgments on individuals and those, like the investigation of this Commission, charged with responsibility to gather information as a solid foundation for legislative action. Judgments by the Commission condemning or stigmatizing individuals are not called for. When official pronouncements on individuals purport to rest on evidence and investigation, it is right to demand that those so accused be given a full opportunity for their defense in such investigation, excepting, of course, grand jury investigations."

The United States District Court adopted the opinion of the Louisiana State Supreme Court rendered in *Martone v. Morgan*, 207 So.2d 770,<sup>3</sup> as its own in connection with the constitutional question raised concerning the state law involved. In the course of its opinion the Louisiana Supreme Court pointed to the disclaimer in the state statute that the state agency had no authority to make binding adjudication and urged this as a magic formula of immunity against the practical effects of the incriminatory and defamatory judgments against individuals, which the state agency is duty bound to make. This is an erroneous postulate.

It is immaterial for the purpose of the resultant irreparable injury to the individual, that the "findings" of the Commission do not rise to the dignity of legal

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<sup>3</sup>This decision is pending before this court on rehearing and docketed under number 216, of the October Term, 1968.

istic or binding "adjudication." The fact of the "findings" is the same. These "findings" declare a status. They are official pronouncements on individuals. They condemn; they stigmatize; they maim; and they cripple. The resultant injury is real, immediate and incalculable. As Justice Frankfurter said in his concurring opinion in *Joint Anti-Fascist Refugee Committee v. McGrath* (1951), 341 U.S. 123, 71 S.Ct. 624, in connection with an identical argument: (71 S.Ct. at p. 650)

"Nor does he obtain immunity on the ground that designation is not an 'adjudication' or a 'regulation' in the conventional use of those terms: *Due process is not confined in its scope to the particular forms in which rights have heretofore been found to have been curtailed for want of procedural-fairness.* Due process is perhaps the most majestic concept in our whole constitutional system. While it contains the garnered wisdom of the past in assuring fundamental justice, it is also a living principle not confined to past instances."

The rights of individuals appearing before the Commission have been curtailed for want of procedural fairness and whether the form of the juggernaut which tramples these rights is that of "adjudication," "regulation" or "findings" the proscription of due process applies. In such a context the State Statute's repugnance to elementary constitutional strictures is transcendent. *Greene v. McElroy* (1959), 360 U.S. 474, 79

S.Ct. 1400; *Joint Anti-Fascist Refugee Committee v. McGrath*, *supra*.

In HANNAH the court expressly held that the commission in question did "not hold trials or determine anyone's civil or criminal liability." The Commission under the State law however does in fact hold trials. Moreover, it holds public trials. The Commission furthermore determines the criminal liability of persons appearing before it and otherwise. In HANNAH the court held that the commission did not "indict." But the Commission under the State law has the authority to effect the equivalent of an indictment. It is expressly authorized, through its Chairman, to file criminal charges against individuals. Thus, it accuses, which is what an indictment does. In HANNAH the court held that the commission "does not make determinations depriving anyone of his life, liberty or property." The Louisiana Commission however does make such determinations. Its determination that an individual is guilty of crime denies one of his legal right to be free from defamation, a property right recognized by the Court in *Joint Anti-Fascist Refugee Committee v. McGrath*, *supra*. And as the court held in HANNAH,

"Thus, when governmental agencies adjudicate or make binding determinations which directly affect legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process."

A contextual evaluation of the statute in question leaves no room for doubt that the consequence of being adjudged or found guilty of criminal law violations, of being deprived of the right to be free from defamation, is neither conjectural nor incidental to the hearings of the Commission. Such consequences are the *sole* objectives of the hearings. The public pronouncement of such adjudication or findings is the *sole* reason for which the Commission exists; it is the *sole* purpose for which it functions. The Commission of Inquiry of Louisiana has no other legitimate purpose than to make such adjudication. And in the constitutional context of due process, such findings are just as binding and just as much an adjudication as was the Attorney General's "designation" of subversion, found by the Court to be constitutional adjudication in *Joint Anti-Fascist Refugee Committee v. McGrath*, *supra*; just as much an adjudication as was the fixing of minimum rates by the Secretary of Agriculture in *Morgan v. United States*, 304 U.S. 1, 58 S.Ct. 773; and just as much of an adjudication as was the Security Clearance findings in *Greene v. McElroy*, *supra*.

Thus, the State statute in question, for the multiple reasons heretofore mentioned, obviously is constitutionally null and void.

**THE ACTS AND DEEDS OF STATE OFFICIALS  
DEPRIVE APPELLANT OF HIS  
CONSTITUTIONAL LIBERTIES**

An approach to a discussion of defendants' motion to dismiss must be made with the acknowledgment

that such a motion admits all of the allegations of fact in the complaint. *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 71 S.Ct. 624; *Robichaud v. Ronan*, 351 F.2d 533. Furthermore, as stated by the court in *Lewis v. Brautigam*, 227 F.2d 124, 127:

“A complaint should not be dismissed on motion, unless, upon any theory it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts that could be proved in support of his claim.”

The broad reach of the federal statute under consideration was defined almost thirty years ago in *Hague v. CIO* (1939), 307 U.S. 496, 59 S.Ct. 954, to include all of the rights embraced by the Fourteenth Amendment in these words:

“It (1983) thus includes the Fourteenth Amendment and such privileges and immunities as are secured by the due process and equal protection clauses, as well as by the privileges and immunities clause of that Amendment. \* \* \*”

Furthermore, as stated by the court in *Ex Parte, Virginia*, 100 U.S. 339, 347:

“Whoever, by virtue of public position under a state government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates these constitutional inhibitions \* \* \*.”

Salient aspects of appellant's original and supplemental petitions establish that defendants, in their ~~officer~~ capacities as state officials and acting through their agents, conspired together and acted in concert with others willfully and purposefully to deny and have denied to and deprive appellant and those similarly situated of their rights, privileges and immunities secured to them by the United States Constitution. They have filed knowingly false criminal charges. They have bribed and attempted to bribe witnesses to give incriminating evidence in furtherance of the criminal charges filed by them. They have threatened and continue to threaten to knowingly use perjured evidence against appellant. They have intimidated public officials into carrying out their evil intentions, in consequence of which appellant has been denied of a speedy trial and continues to be denied of a speedy trial.<sup>4</sup> They have plotted to murder certain union officials. They have threatened with criminal prosecution for perjury in state court any person who would give evidence in federal court in support of appellant's allegations of conspiracy mentioned in his complaints.<sup>5</sup>

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<sup>4</sup>The trial of criminal charges against Mr. Jenkins was fixed for October 7, 1968. The prosecution, however, moved to set aside the trial date without reassignment. This motion was granted over the vigorous protest of Mr. Jenkins. He continues to be unable to be granted a trial of these criminal charges.

<sup>5</sup>On January 25, 1968, Governor McKeithen threatened with perjury prosecution in state court anyone who might give evidence in support of Mr. Jenkins' allegations contained in his original and supplemental complaint. His threat was verbalized by him in these following words, as reported in the *Morning Advocate* newspaper of Baton Rouge, Louisiana, in its January 26, 1968, issue, to-wit:

"Any testimony under oath that there is any connection, on my part, on Dean Hebert's part or Dean Mor-

Moreover said state officials in fact did in state court a formal charge of perjury against Mr. George Wyatt for having subscribed to an affidavit (R 35) filed in the United States District Court of Baton Rouge, Louisiana, in connection with appellant's supplemental complaint.

In essence the foregoing facts are exemplified by appellant's original and supplemental complaints. These facts demonstrate that there exists a continuing and alarming deprivation by state officials of the constitutionally guaranteed rights of appellant and those similarly situated. There is a clear and imminent threat of an irreparable injury amounting to manifest oppression. In fact the supporting affidavits demonstrate the existence of an imminent threat to the very lives of some of those involved. In such a context a motion to dismiss, which admits all of the allegations of fact, cannot survive. As verbalized by this court

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gan's part, of any conspiracy with anyone, other than those who are guilty of bombing, aggravated battery, extortion and so forth, they immediately shall be charged with perjury and we shall have some more go to the penitentiary."

Mr. George Wyatt's affidavit supporting Mr. Jenkins' allegations was filed in the United States District Court at Baton Rouge, Louisiana on May 3, 1968. (See affidavit, R 35) On July 30, 1968, an agent of the Labor Management Commission of Inquiry filed in state court a criminal charge of perjury against Mr. Wyatt in fulfillment of McKeithen's threat. (See perjury charge, A 55)

For additional innumerable instances of wrongful state acts occurring since the filing of this lawsuit see the rehearing application filed in this Court in connection with the companion case of *Martone v. Morgan, et al*, pending before this Court under docket number 216 of the October Term, 1968.

in *Cooper, et al v. Aaron, et al*, (1958), 358 U.S. 1, 78 S.Ct. 1401, 1409:

"The controlling legal principles are plain. The command of the Fourteenth Amendment is that no 'state' shall deny to any person within its jurisdiction the equal protection of the laws. 'A state acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the state, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a state government \* \* \* denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the state, and is clothed with the state's power, his act is that of the state. This must be so, or the constitutional prohibition has no meaning.' *Ex Parte Virginia*, 100 U.S. 339, 347, 25 L.Ed. 676. Thus the prohibitions of the Fourteenth Amendment extend to all action of the state denying equal protection of the law; whatever the agency of the state taking the action. See *Virginia v. Reeves*, 100 U.S. 313, 25 L.Ed. 667; *Commonwealth of Pennsylvania v. Board of Directors of City Trusts of Philadelphia*, 353 U.S. 230, 77 S.Ct. 806, 1 L.Ed. 2d 792; *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161; or whatever the disguise in which it is taken, see *Der-*

rington v. Plumber, 5th Cir., 240 F.2d 922; Department of Conservation and Development v. Tate, 4th Cir., 231 F.2d 615."

The responsibility of the federal courts to protect federally secured rights and the duty of the states to give effect to them are reciprocal and inescapable. Said the Court of Appeals for the Fifth Circuit in *United States v. Jefferson County Board of Education, et al*, 372 F.2d 836, 873:

"A primary responsibility of Federal Courts is to protect nationally created constitutional rights. A duty of the states is to give effect to such rights \* \* \*."

A suggestion that the facts established by the pleadings do not spell out a deprivation of nationally created constitutional rights cannot but have its origin in facetiousness. A more consummate or transcendent denial than that exemplified by the pleadings cannot be imagined.

"The equal protection of the laws is 'a pledge of the protection of equal laws.'" *State of Missouri, ex rel., Gaines v. Canada, et al.*, (1938) 305 U.S. 337, 59 S.Ct. 232, 236.

And as Judge Brown of the Court of Appeals for the Fifth Circuit said in *England v. Louisiana State Board of Medical Examiners*, 263 F.2d 661, 665, "the mere form of the statutes of a state cannot justify or excuse

the deprivation of one's rights under the constitution of the United States".

Among the many constitutionally secured rights denied appellant by the acts of the state officials is his right to a meaningful and effective membership in a trade union. The conspiracy charged to state officials in his complaints has as its primary objective the destruction of that trade union. With its destruction will go its effectiveness as a trade union, and consequently the group protection to appellant's economic rights, a matter of incalculable value to him. This is a right, however, which is secured to appellant by the First and Fourteenth Amendments to the United States Constitution and thus cannot be taken from him without complying with the rigorous demands of the due process and equal protection clause of the Fourteenth Amendment. *Beauharnais v. People of the State of Illinois* (1952), 343 U.S. 250, 72 S.Ct. 725, rehearing denied, 72 S.Ct. 1070, 343 U.S. 988; *NAACP v. Button, et al.*, (1963) 371 U.S. 415, 83 S.Ct. 328.

The abusive conduct of state officials in this case is challenged under the provisions of Title 42, USC, Sections 1981, 1983 and 1988. That the allegations of his complaints state a claim under Section 1983 is made manifest by the thrust of the jurisprudence exemplified by the following cases: *Monroe v. Pape*, 81 S.Ct. 473; *United States v. Classic*, 313 U.S. 299, 61 S.Ct. 1031; *Pyle v. Kansas*, 317 U.S. 213, 63 S.Ct. 177; *Hague v. CIO*, 307 U.S. 496, 59 S.Ct. 954; *Birnbaum v. Trussell*, 371 F.2d 672; *Basista v. Weir*, 340 F.2d 74; *Nesmith v. Alford*, 318 F.2d 110; *Cohen v. Norris*, 300 F.2d 24; *Hughes v.*

*Noble*, 395 F.2d 495; *Brazier v. Cherry*, 293 F.2d 400; *Coleman v. Johnson*, 247 F.2d 273; *United States, ex rel, Potts v. Rabb*, 141 F.2d 45; *Valle v. Stingel*, 176 F.2d 697; *Cancino v. Sanchez*, 379 F.2d 808; *Jenks v. Henys*, 378 F.2d 335; *Brown v. Brown*, 368 F.2d 992; *Morgan v. Labiak*, 368 F.2d 338; *DeWitt v. Pail*, 366 F.2d 682; *Smith v. Hampton Training School for Nurses*, 360 F.2d 577; *Rivers v. Royster*, 360 F.2d 592.

This court has stated in no uncertain terms that by the enactment of 42 USC 1983 the Congress meant to give a remedy to parties deprived of constitutional rights, privileges and immunities by abuse of official position. *Monroe v. Pape*, supra. Further the court said: (81 S.Ct. at R. 476)

"There can be no doubt at least since *Ex Parte Virginia*, 100 U.S. 339, 346-347, 25 L.Ed. 676, that Congress has the power to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a state and represent it in some capacity, whether they act in accordance with their authority or misuse it. \* \* \*"

Appropriate to the nature of the question before the court is the language of the court in *Jordan v. Hutchesson*, 323 F.2d 597:

"Although the federal courts will recognize and respect the state's right to exercise through its legislature broad investigatory powers, nevertheless these powers are not

unlimited and it remains the duty of the federal courts to protect the individual's constitutional rights from invasion either by state action or under color thereof."

According to the pleadings the total police power of the State of Louisiana, wielded from the throne of the highest command, has been and continues to be unleashed against appellant and those similarly situated. A studied and deliberate state effort has been made to create a distinct class, i.e., members of Teamsters Local Union No. 5. And in the application of state laws, including the State Act under attack, members of that trade union have been singled out for different treatment not based on some reasonable classification, in consequence of which they have been and continue to be denied of constitutionally secured rights. Where such a showing is made the guarantees of constitutional liberty has been violated. As stated by this court in *Hernandez v. State of Texas*, (1954) 347 U.S., 74 S.Ct. 667, 670:

"When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the constitution have been violated."

Thus, based upon the allegations of the complaints and the documents forming a part thereof, viewed against the backdrop of the national jurisprudence, it is at once apparent that the lower court committed

reversible error in maintaining defendants' motion to dismiss.

### **CONCLUSION**

Appellant respectfully submits that he is entitled to a decree which shall declare the State Statute in controversy unconstitutional and which shall enjoin its enforcement.

Appellant is furthermore entitled to a decree holding that the allegations of his complaints do set forth a claim upon which injunctive relief should be granted and ordering the United States District Court for the Eastern District of Louisiana to proceed to a hearing of the merits of the complaints both as to interlocutory and permanent injunctions.

Respectfully submitted,

**J. MINOS SIMON  
1408 Pinhook Road  
Post Office Box 52116, OCS  
Lafayette, Louisiana**

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**ATTORNEY FOR  
APPELLANT**

**PROOF OF SERVICE**

I, J. Minos Simon, attorney for appellant herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 23rd day of January, 1969, I served a copy of the foregoing Original Brief on Behalf of Appellant on the several parties hereto by mailing said copies in a duly addressed envelope with first-class postage prepaid to their attorneys of record, Mr. Jack P. F. Gremillion, Attorney General of Louisiana, Baton Rouge, Louisiana; Mr. Ashton L. Stewart, Special Assistant Attorney General, 604 Union Federal Building, Baton Rouge, Louisiana, and Mr. Victor A. Sachse, Special Assistant Attorney General, 701 Fidelity National Bank Building, Baton Rouge, Louisiana.

Lafayette, Louisiana, this 23rd day of January, 1969.

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J. MINOS SIMON

**APPENDIX B****ACT NO. 2  
HOUSE BILL NO. 2****AN ACT**

To amend Chapter 8 of Title 23 of the Louisiana Revised Statutes of 1950, to add thereto a new Part, to be designated as Part III-A thereof and containing R.S. 23:880.1 through R.S. 23:880.18, both inclusive, to create the Labor-Management Commission of Inquiry; to provide with respect to its composition, selection and other matters relating to the organization and functioning thereof; to fix the powers, duties and functions of said commission in connection with the investigation and findings of facts relating to violations or possible violations of criminal laws of the state of Louisiana or of the United States arising out of or in connection with matters in the field of labor-management relations, including the exercise of the subpoena power; the authority to take depositions; to authorize the commission to hold executive and public hearings; to provide with respect to the rights, privileges, duties and immunities of witnesses; to define certain misdemeanors and fix penalties therefor; to provide with respect to contempt committed before the commission or in connection with its process; to require cooperation with the commission by all public officials, boards, commissions, departments and agencies of the state and all political subdivisions thereof; to otherwise provide with respect to matters pertaining to the purposes for which said commission is created, and to appropriate the sum

of Two Hundred and Fifty Thousand (\$250,000.00) Dollars, or so much thereof as may be necessary, out of the General Fund of the state of Louisiana for the fiscal year 1967-68 to the Labor-Management Commission of Inquiry, to be used by it for operations in connection with the purposes for which it is created.

WHEREAS, unprecedented conditions presently exist in the state under which there has been a shut-down of construction work involving industrial development projects giving employment to thousands of persons and vitally affecting the public interest and threatening the orderly conduct of normal labor-management relations; and

WHEREAS, in connection with the conditions above referred to there have been allegations and accusations of violations of the state and federal criminal laws which should be thoroughly investigated in the public interest; and

WHEREAS, in order to supplement and assist the efforts and activities of the several district attorneys, grand juries and other law enforcement officials and agencies of the State of Louisiana and of the United States, it is imperative that additional investigative facilities on a state-wide basis be made available; and

WHEREAS, it is essential that immediate action be taken to empower the Governor in this existing situation and in any similar emergencies that may arise in the future promptly to initiate action by which the facts causing or contributing to such conditions may be in-

vestigated and other appropriate action taken when such investigation indicates probable violations of state or federal criminal laws. Now, therefore

Be it enacted by the Legislature of Louisiana:

Section 1. Part III-A of Chapter 8 of Title 23 of the Louisiana Revised Statutes of 1950, comprising R.S. 23:880.1 through R.S. 23:880.18, both inclusive, is hereby enacted to read as follows:

**PAR. III-A. LABOR-MANAGEMENT  
COMMISSION OF INQUIRY**

**§ 880.1. Labor-Management Commission of Inquiry; creation, vacancies, domicile**

The Labor-Management Commission of Inquiry is created as a permanent commission administratively, with the powers of inquiry hereinafter set forth only to be exercised on an ad hoc basis as hereinafter provided. The commission shall be composed of nine members who shall be appointed by the governor and who shall serve at the pleasure of the governor. Three of the members shall be appointed from among the representatives of organized labor in Louisiana, three from industry located within Louisiana and three shall be Louisiana residents and representatives of the public generally. Any vacancy for any cause shall be filled by appointment by the governor in the same manner as above stated. Any temporary vacancy, including recusation of any member in any investigation, may be filled by the governor on an ad hoc basis.

The domicile of the commission shall be in the city of Baton Rouge, but meetings may be held at any place within the state.

**§ 880.2. Officers of commission; secretary**

The governor shall designate the chairman and vice-chairman, who shall be members of the commission. The governor's executive counsel shall serve as secretary to the commission and shall be the official custodian of all records of the commission, and in proper cases shall authenticate and certify to the accuracy thereof. He shall perform such other functions as are assigned by the commission.

**§ 880.3 Compensation of members**

The members of the commission shall receive no salary but each shall be paid a per diem of fifty dollars for each day of actual attendance at meetings of the commission and shall be paid at the rate of ten cents per mile for travel expenses incurred while on business for the commission.

**§ 880.4. Quorum; vote necessary for actions**

A majority of the members of the commission shall constitute a quorum. The affirmative vote of five members of the commission shall be necessary for the commission to take any action.

**§ 880.5. Referral of matters to commission by governor**

Whenever, in the opinion of the governor, there is serious and substantial indication or there are widespread allegations that there is or may be widespread or continuing violations of existing criminal laws of the United States or of the state of Louisiana affecting in a significant manner labor-management relations in one or more areas of the state and that, as a result thereof, there exists a serious threat to the economic well-being of the affected area or the state as a whole, he may refer the matter to the commission in writing for such action as it is hereinafter authorized to take.

§ 880.6. Public hearings, jurisdiction of commission

A. Whenever the governor refers any matter to the commission, it shall, as expeditiously as practicable, investigate and hold hearings at which it shall receive testimony and documentary evidence, or either of them, and it shall ascertain the facts surrounding or pertaining to and shall make findings with respect to any actual or probable violations of the criminal laws of this state or of the United States which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations. The power, authority or jurisdiction of the commission in the conduct of any investigation and also during the course of any executive session or public hearing held by it shall be investigatory and fact finding only and shall be limited to matters which have been referred to it by the governor and which are or may be violations of the criminal laws of the United States or of this state which relate to, arise out of or are connected with

problems or disputes in the field of labor-management relations.

B. The commission shall have no power, authority or jurisdiction to investigate, hold hearings or seek to ascertain the facts or make any reports or recommendations on any of the strictly civil aspects of any labor problem or dispute, but inquiry into alleged criminal acts shall not be improper because recital thereof may reflect upon some civil aspects thereof, and its power authority or jurisdiction shall in no case extend to (1) any matter which is solely an "unfair labor practice" or an "unfair employment practice" or a legitimate labor dispute under the provisions of any federal or state law; or (2) any matter which relates to legitimate economic issues arising between labor and management or the manner in which such labor practices or economic issues are to be settled between the parties, whether by negotiation, arbitration, lockout or strike; or (3) any matter which relates solely to the internal affairs of labor organizations, including but not necessarily restricted to membership policies, election procedures, membership rights and like matters; or (4) any alleged acts of violence or threats of violence or so-called "mass picketing," or like conduct by either an employer or a union, which is not related to bribery or extortion, as defined by law, but which is related only to an organizational objective of a labor union or which is related only to furthering the interests of one side or the other in a "labor dispute" as that term is defined by federal or state law, such conduct being already regulated by and subject to the police power of the state, exercised through such agencies as the Division

of State Police; or (5) any matter which relates solely to the internal affairs of any business organization, including but not necessarily restricted to its labor and business policy and general operations, or (6) any matters which constitute a combination of any two or more of these. In addition, the commission shall have no power, authority or jurisdiction to file, intervene in or in any manner participate in any civil judicial proceedings, except for the purpose of seeking the enforcement of a subpoena issued by it in accordance with the provisions of this Part, or except for the institution of contempt proceedings as provided in this Part or except when the commission has been made a defendant in any civil suit.

C. Upon the request of the governor, the commission may assign all or part of its investigatory forces to the State Police to assist them in investigating any violations or probable violations of law and in apprehending all persons engaged in violation of law. During such assignment such investigators shall be under the supervision of the Director of the Department of Public Safety and have all the power and authority of other members of the State Police.

D. All public officials, personnel, employees and agents of all boards, commissions, departments and agencies of the state and of the political subdivisions of the state shall cooperate fully with the commission, to the end that it may effectively and comprehensively carry out its functions and duties.

§ 880.7. Findings; recommendations to governor; criminal charges; interim reports

A. Upon the completion of its investigations and after public hearing the commission shall make and publicize its findings with respect to the question whether or not there is probable cause to believe that there are or have been violations of any criminal law or laws of the United States or of the state of Louisiana arising out of or in connection with or as a result of the matter which is the subject of the investigation. The commission shall have no authority to and it shall make no binding adjudication with respect to such violation or violations; however, it may, in its discretion, include in its findings the conclusions of the commission as to specific individuals or as to the general situation, or as to both, and it may make such recommendations for action to the governor as it deems appropriate. Copies of its report shall be immediately furnished to the governor, the lieutenant governor, the attorney-general and the legislature. No findings, conclusions, recommendations or reports of the commission may be used as prima facie or presumptive evidence of the guilt or innocence of any person in any court of law.

B. If the commission finds that there is probable cause to believe that there has been a violation of any criminal law of the United States or of this state and that such violation arises out of or in connection with or as a result of a problem or dispute in the field of labor-management relations, it shall report its findings and recommendations to the proper federal and

state authorities, or either of them, charged with the responsibility for prosecution of criminal offenses. In addition, when directed to do so by the commission, the chairman shall file appropriate charges with the state and federal authorities having jurisdiction.

C. The commission shall make interim reports of its findings to the governor at such times as the commission or the governor may deem desirable.

D. With respect to any of its findings, the commission may request the governor to refer the matter to the attorney general asking that he exercise the full authority conferred by Article VII, Section 56 of the Constitution in causing criminal prosecutions to be initiated in accordance with law.

#### § 880.8. Powers of commission

In order to carry out the functions vested in it the commission may:

(1) Adopt, amend, publish and enforce such rules and regulations, not inconsistent with the provisions of this Part, as it deems necessary to fully effectuate the purposes for which it is created.

(2) Employ and fix the duties and compensation of such attorneys, investigators, staff personnel and other persons and make such other expenditures as it finds necessary to accomplish the purposes of this Part; provided that all salaries and compensation fixed by the commission shall be approved by the governor.

(3) Administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation and require the production of books, records, documents or other evidence deemed relevant or material to any executive session or public hearing held or deposition taken by the commission, but only at such executive session, public hearing or at the time of taking the deposition. The power herein granted to issue subpoenas and compel attendance of witnesses and the production of books, records, documents or other evidence shall be exercised in accordance with the provisions of Section 880.9 of this Part.

(4) Order testimony to be taken by deposition in cases where the commission determines that a witness is incapacitated, and by virtue thereof, unable to attend the hearing or to appear in person before the commission during the course of an executive session or a public hearing, or is outside the boundaries of the state of Louisiana. Such depositions may be taken before any person designated by the commission who is authorized to administer oaths. Unless otherwise ordered by the commission, such depositions shall be filed at the public hearing and be made part of the record. Testimony by deposition may be taken within or without the state. If taken within the state subpoena may issue from the commission compelling attendance and production of records. If taken without the state, the commission may apply to the district court having jurisdiction over the area where the commission is holding an executive session or public hearing, or to the district court in and for the parish of East Baton Rouge, for an order directing the taking of the deposi-

tion, in the manner provided by law for the taking of foreign depositions in judicial proceedings.

Testimony taken by deposition shall be reduced to writing by the person taking the deposition, or under his direction, and shall be subscribed by the deponent.

(5) Do and perform any other things necessary to accomplish the purposes for which it is created.

§ 880.9. Service of subpoenas; returns; failure to comply; contempt of commission

A. Subpoenas issued under authority of Paragraph (3) of Section 880.8 of this Part shall be served by domiciliary or personal service and may be served by any sheriff, deputy sheriff or employee designated by the commission. Domiciliary service shall be made by leaving the subpoena at the dwelling house or usual abode of the witness, with a person of suitable age and discretion residing therein as a member of the domiciliary establishment of the witness, or at any place where the business of the witness is regularly conducted, with a person of suitable age and discretion there employed. Subpoenas for the production of documents shall be served in a similar manner. The person making the service of any subpoena shall make a return thereon, setting forth the date, place, type of service and sufficient other data to show service in compliance with this Section. The return shall be signed and promptly returned to the commission.

B. (1) In the event any person fails or refuses to obey a subpoena issued in accordance with the provisions of this Part, the commission may present its petition to any state district court within the jurisdiction of which the hearing is held or within the jurisdiction of which the person is found or resides or has his principal place of business, setting forth the facts. The court then shall have the power to compel such person to appear before the commission and give testimony or produce evidence as ordered. Any failure to obey such an order of the court may be punished by the court issuing the same as a contempt thereof. In addition, if any person commits any act which is contemptuous of any authority vested in the commission or of any procedure taken by the commission in conformity with the powers vested in it by the provisions of this Part, the commission may present its petition, setting forth the facts, to any state district court within the jurisdiction of which the hearing is held or within the jurisdiction of which the person is found or resides or has his principal place of business. Upon a finding of guilt, such person shall be adjudged in contempt of the commission and shall be punished by the court as a contempt of court.

(2) Contempt of the commission shall include but shall not be limited to any of the following acts:

(a) Contumacious failure to comply with a subpoena to appear before the commission, proof of service of which appears of record;

- (b) Contumacious violation of an order excluding or separating a witness;
- (c) Refusal to take the oath or affirmation as a witness, or refusal of a witness to answer a relevant question when ordered to do so by the commission, or refusal to answer any other question when granted the immunity conferred by Section 880.13 of this Part.
- (d) Contumacious, insolvent or disorderly behavior toward the commission, any member thereof or its attorney during the course of any executive session or public hearing, which tends to interrupt or interfere with the business of the commission or to impair its dignity or respect for its authority;
- (e) Breach of the peace, boisterous conduct or violent disturbance tending to interrupt or interfere with the business of the commission or to impair its dignity or respect for its authority;
- (f) Use of insulting, abusive or discourteous language by an attorney or other person at any hearing or in a document filed with the commission.

C. The chairman or other presiding officer may punish breaches of order or of decorum by censure or by exclusion from the hearing, or by both.

#### § 880.10. Rights of witnesses; right to counsel

A. No person may be required to appear or to testify at any executive session or public hearing held by

the commission or give a deposition unless a copy of this Part and a general statement of the subject of the investigation has been served upon him prior to the time when he is required to appear or to give a deposition.

Provided, however, that in the event a witness objects to a question or a series thereof or to the subpoena on the ground that he has not been given sufficient information as to the subject of the investigation, such objection shall be submitted to the commission, and in the event that the commission determines that the objection has merit, the commission shall inform the witness adequately as to the purpose of the investigation and shall afford the witness reasonable additional time within which to prepare for the hearing. If the commission determines by majority vote that the objection is without merit, such ruling shall be final, and the witness shall be ordered to answer the questions of the commission or to comply with the subpoena. If the witness fails or refuses to comply with the order of the commission or fails or refuses to comply with the order of the commission after the lapse of such additional time as the commission may have granted him within which to comply after further advising him of the nature of the inquiry, the commission shall exercise its powers set forth in Section 880.9 of this Part.

B. A witness summoned to appear before the commission shall have the right to be accompanied by counsel, who may advise him of his rights, subject to such reasonable limitations as the commission may

impose in order to prevent obstruction of or interference with the orderly conduct of the hearing. Counsel for any witness who testifies at an executive session or at a public hearing may question the witness he accompanies concerning relevant matters. In no event shall counsel for any witness have any right to examine or cross-examine any other witness but he may submit to the commission proposed questions to be asked of any other witness appearing before the commission, and the commission shall ask the witness such of the questions as it deems to be appropriate to its inquiry.

#### § 880.11. Witness fees

Witnesses summoned to appear before the commission shall be paid the same fees and mileage as are allowed by law for witnesses in criminal cases.

#### § 880.12. Evidence and testimony at executive and public sessions; protection of witnesses; penalties

A. The commission shall base its findings and reports only upon evidence and testimony given at public hearings. Prior to and at any time during or subsequent to the conduct of a public hearing the commission may go into executive session. It shall go into executive session upon the request of any member of the commission who states that in his opinion evidence or testimony being given or to be given at a public hearing may tend to degrade, defame or incriminate any person. In such executive session it shall afford the person who might be degraded, defamed or in-

criminated an opportunity to appear and be heard in the executive session, with a reasonable number of additional witnesses in his behalf requested by him, before deciding to receive such evidence or testimony in public hearing. If the commission should decide that such evidence or testimony should be heard in a public hearing, the evidence must be offered and filed anew in the public hearing and the testimony of the witness must actually be given at the public hearing, both without reference to the fact that the commission previously had viewed the evidence in executive session or heard the same or other testimony of the witness in executive session.

Should the commission determine to receive such evidence or testimony in public hearing, the person who might be degraded, defamed or incriminated thereby shall be given an opportunity at the public hearing to appear as a voluntary witness, or to file a sworn statement in his own behalf and submit brief, pertinent, sworn statements of others, or to submit to the commission a list of such persons as he may wish to have subpoenaed as additional witnesses. The actual issuance of any additional subpoenas shall be in the discretion of the commission.

B. It shall be a misdemeanor for any member of the commission, its counsel or employees, to make public any evidence or testimony taken at a private investigation or at any executive session. Whoever violates this Subsection shall be fined no more than one thousand dollars or be imprisoned for not more than one year, or both.

C. Any person whose name is mentioned or who is specifically identified and who believes that testimony or other evidence given at a public hearing or comment made by any member of the commission or its counsel at such a hearing tends to defame him or otherwise adversely affect his reputation shall have the right either to appear personally before the commission and testify in his own behalf as to matters relevant to the testimony or other evidence complained of or, in the alternative at the option of the commission, to file a statement of facts under oath relating solely to matters relevant to the testimony or other evidence complained of, which statement will be incorporated in the record of the investigatory proceeding.

#### § 880.13. Immunity of witnesses

Whenever in the judgment of the commission the testimony of any witness, or deposition thereof, or the production of books, papers or other evidence by any witness, in any matter pending before it, is necessary to the public interest and the proper discharge by the commission of its duties imposed by this Part, the commission may make application to the district court having jurisdiction over the place where the hearing is being held, or to the district court in and for the parish of East Baton Rouge, requesting that the witness be instructed to testify, depose or produce evidence subject to the provisions of this Part, and upon order of the court such witness shall not be excused from testifying or deposing, or from producing books, papers or other evidence on the ground that the testimony or evidence required of him may tend to incrim-

inate him or subject him to a penalty or forfeiture. However, no such witness so ordered by the court shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify, depose or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding against him in any court except for a prosecution for perjury or contempt committed while giving testimony, or while deposing or producing evidence under compulsion as provided herein.

#### § 880.14. Misdemeanors and penalties

Whoever:

(1) Uses or attempts to use violence, force or threats, with the intent to influence the testimony or conduct of any witness or person about to be called as a witness at any hearing before the commission, whether in executive session or a public hearing, or in connection with any investigation ordered by the commission; or

(2) Uses or attempts to use violence, force or threats to the person, his family, or property of any witness on account of his having attended any session or hearing or investigation, or on account of his testifying or having testified with respect to any pending matter; or

(3) With intent to avoid, evade, prevent or obstruct compliance, wholly or partially, with any subpoena issued by the commission, removes from any place, conceals, destroys, mutilates, alters or by any means falsifies any documentary material subject to such subpoena; or

(4) By force or threats, or by willful acts prevents, obstructs, impedes or interferes with, or attempts to prevent, obstruct, impede or interfere with the due exercise of rights or the performance by the commission of its duties as imposed by this Part shall be guilty of a misdemeanor and upon conviction shall be fined not more than two thousand dollars or be imprisoned for not more than two years, or both.

~~§ 880.15. Records of hearings~~

A. A complete and accurate record shall be kept of each public hearing, and any witness shall be entitled to a copy of his testimony at such hearing, at his own expense.

B. The records of any public hearing held by the commission, when properly authenticated and attested by the secretary of the commission, are public records and shall be subject to the provisions of Chapter 1 of Title 44 of the Louisiana Revised Statutes of 1950, as amended.

~~§ 880.16. Immunity of commission members and employees~~

No action, proceeding or decision of the commission, or any of its members or employees in the exercise of its duties, functions and obligations in conformity with the provisions of this Part, shall subject any member or employee thereof to any suit or liability for damages in connection therewith.

**§ 880.17. Budget unit of state; reversion of funds**

The commission shall be a separate budget unit of this state, as defined by law, and as such shall be subject to the provisions of Title 39 of the Louisiana Revised Statutes of 1950, as amended, and all other laws relating or applicable to budget units. Any funds appropriated to the commission which remain unexpended and unencumbered at the close of any fiscal year shall be remitted to the state general fund in accordance with law.

**§ 880.18. Liberal construction; exclusion from Administrative Procedure Act**

The provisions of this Part shall be liberally construed to effectuate the purpose for which it was enacted. The provisions of Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950, as amended, shall not apply to the Labor-Management Commission of Inquiry.

Section 2. The sum of Two Hundred Fifty Thousand (\$250,000.00) Dollars, or so much thereof as may be necessary, is hereby appropriated out of the General

Fund of the state of Louisiana for the fiscal year 1967-1968 to the Labor Management Commission of Inquiry, to be used by said Commission for operations in connection with the purposes for which it is created.

Section 3. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not effect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

Section 4. All laws or parts of laws in conflict here-with are hereby repealed.

Section 5. The necessity for the immediate passage of this Act having been certified by the governor to the legislature while in session, in accordance with Section 27 of Article III of the Constitution of Louisiana, this Act shall become effective immediately upon approval by the governor.

/s/ **VAIL M. DELONY**  
**SPEAKER OF THE HOUSE OF**  
**REPRESENTATIVES**

/s/ **C. T. AYCOCK**  
**LIEUTENANT GOVERNOR AND**  
**PRESIDENT OF THE SENATE**

/s/ **JOHN J. McKEITHEN**  
**GOVERNOR OF THE**  
**STATE OF LOUISIANA**

APPROVED: July 22, 1967, at 10:52 A.M.

STATE OF LOUISIANA  
VS.  
GEORGE O. WYATT

Room 405, Bellemont Motel  
7370 Airline Highway  
Baton Rouge, Louisiana

No. \_\_\_\_\_

STATE OF LOUISIANA  
PARISH OF EAST BATON ROUGE  
Personally came and appeared before me  
/s/ FRED S. LeBLANC  
Judge of the Nineteenth Judicial  
District Court

Joseph A. Oster, Department of Justice, State of Louisiana, State Capitol, Baton Rouge, Louisiana

That one GEORGE O. WYATT, Room 405, Bellemont Motel, 7370 Airline Highway, Baton Rouge, Louisiana, On or about the second (2nd) day of May, 1968, committed perjury in that he did intentionally make a written statement, knowing same to be false under sanction of an oath, before William C. Bradley, Notary Public, an official authorized to take testimony, as follows:

STATE OF LOUISIANA  
PARISH OF EAST BATON ROUGE

GEORGE WYATT, being first duly sworn, did depose and say:

Heretofore he was employed as an undercover investigator for the Labor Management Commission of Inquiry of Louisiana, taking orders alternately from officers and investigators of said Commission of Inquiry including Raymond Ruiz and Joseph A. Oster; that he was advised by his superiors that every effort should be made to criminally involve Edward Grady Partin primarily, and any member of Teamsters Local Union Number 5 of Baton Rouge, Louisiana, so as to bring about the criminal prosecution of Edward Grady Partin and members of Teamsters Local Union Number 5; in pursuit of that particular objective he was advised that he should infiltrate the ranks of Teamsters Local Union Number 5 after which he would be provided with explosives to be used for the purpose of destroying equipment belonging to Barber Brothers Contractors; that thereafter he was to subscribe to a statement to the effect that, and to testify accordingly, the destruction by bombing of said equipment was done pursuant to instructions given to him by Edward Grady Partin; that officials of Barber Brothers Contractors were made aware of this plot to frame Edward Grady Partin and consented thereto, hedging only to the extent of emphasizing that only the old equipment of Barber Brothers Contractors would be singled out for destruction; in furtherance of said plot affiant was employed by Barber Brothers Contractors under a pseudo name and used license plates from the State of Minnesota on his vehicle.

Affiant further states that he was advised that J. D. Arnold, Wade McClanahan, Terry George, Jerry Sylvester, Hugh Maronneaux and Lloyd Kitchen, mem-

bers of Teamsters Local Number 5 of Baton Rouge, Louisiana, could be shot and killed by members of the Commission of Inquiry at the slightest provocation in a manner that would make it appear to be an act of self-defense and that complete immunity would be given to any employees of the Commission of Inquiry who would kill said persons.

Affiant further states that he was told by officials of the Labor Management Commission of Inquiry of Louisiana that as much as Fifty Thousand (\$50,000.00) Dollars could be obtained from persons representing James R. Hoffa to pay to affiant in return for getting Edward Grady Partin by any means to admit that his testimony against James R. Hoffa was not entirely correct.

Affiant states that he was given carte blanche authority to do anything that he thought might be effective, regardless of the legality thereof, so long as there could be developed a factual basis for the criminal prosecution of Edward Grady Partin.

Affiant further states that after criminal charges were filed against Roderick Jenkins and after it became evident that there was no basis for the filing of said criminal charges, Joseph A. Oster, investigator for the Labor Management Commission of Inquiry, in responding to your affiant's statement to the said Oster that it was his information Jenkins had a number of witnesses who would testify that in fact he was on the job site of his employment at the time of the alleged criminal activities for which he was charged, the

said Joseph A. Oster stated that he and members of the Labor Management Commission of Inquiry would find and bring to testify for each witness testifying on behalf of Jenkins, persons who would testify to the contrary and that if Jenkins had fifty witnesses to testify that he was not in Plaquemine, Louisiana, at the site of the criminal activities alleged in the charge against him, Oster and members of the Labor Management Commission of Inquiry would have fifty-one witnesses to say that he was there.

within this State and Parish, and the jurisdiction of the Nineteenth Judicial District Court, contrary to the form of the statutes of the State of Louisiana in such case made and provided, and against the peace and dignity of the same.

Wherefore, deponent prays that the said accused be arrested and dealt with according to law.

(Signed) JOSEPH A. OSTER

Sworn to and subscribed before me this 30th day of July, 1968

(Signed) FRED S. LEBLANC  
Judge Nineteenth Judicial  
District Court of Louisiana

**WARRANT**

State of Louisiana  
Parish of East Baton Rouge  
Nineteenth Judicial District Court.

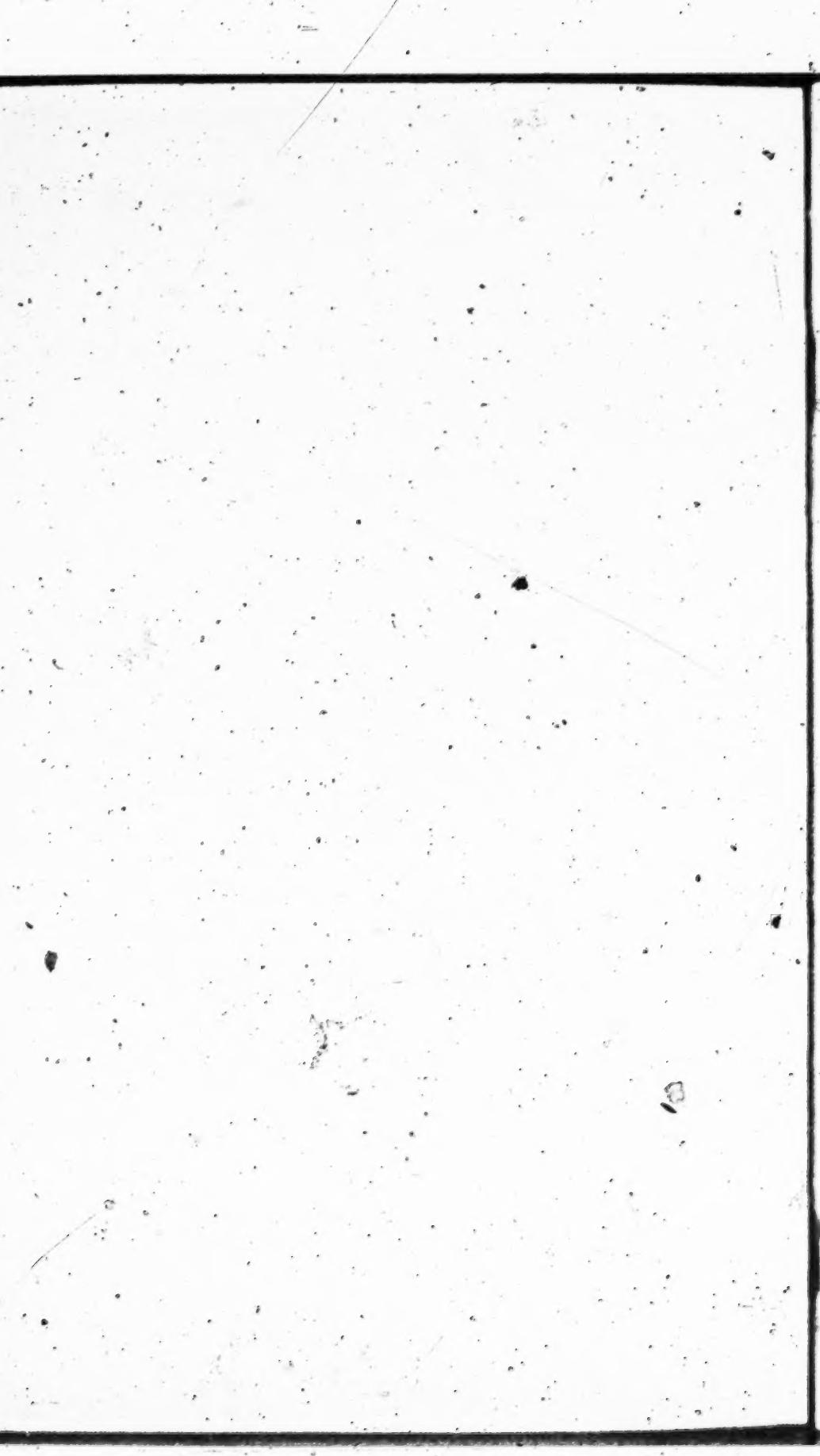
To the Sheriff or any Legal Officer:

WHEREAS, complaint has been made before me, upon oath, of Joseph A. Oster charging, one: George O. Wyatt, Room 405, Bellemont Motel, 7370 Airline Highway, Baton Rouge, La. with Perjury. Now, therefore, you are hereby commanded, in the name of the State, to apprehend and arrest the said accused and bring him before our Court to answer the said complaint. You are further commanded to keep the said accused in safe custody pending a session of the Court, or until released according to law, and this shall be your warrant.

Given under my official signature this 30th day of July 1968

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Judge Nineteenth Judicial  
District Court of Louisiana.



FILED  
FEB 21 1969

No. 548

JOHN F. DAVIS, CLERK

In the  
Supreme Court of the United States

OCTOBER TERM, 1968

RODERICK JENKINS,

Appellant,

v.

JOHN JULIAN McKEITHEN, CECIL MORGAN,

PAUL M. HEBERT, FLOYD C. BOSWELL,

RALPH F. HOWE, A. R. JOHNSON, III,

AND BURT S. TURNER,

Appellees.

On Appeal From The United States District Court,  
Eastern District of Louisiana

ORIGINAL BRIEF ON BEHALF OF APPELLEES

JACK P. F. GREMILLION,

Attorney General,

State of Louisiana,

Baton Rouge, Louisiana.

ASHTON L. STEWART,

Special Assistant Attorney

General of the State of Louisiana,

604 Union Federal Building,

Baton Rouge, Louisiana 70801.

Attorneys for Appellees.



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In the  
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OCTOBER TERM, 1968

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RODERICK JENKINS,

Appellant,

v.

JOHN JULIAN McKEITHEN, CECIL MORGAN,

PAUL M. HEBERT, FLOYD C. BOSWELL,

RALPH F. HOWE, A. R. JOHNSON, III,

AND BURT S. TURNER,

Appellees.

---

On Appeal From The United States District Court,  
Eastern District of Louisiana

---

ORIGINAL BRIEF ON BEHALF OF APPELLEES

---

*May it Please the Court:*

QUESTIONS PRESENTED

Appellees, being dissatisfied with the presentation by appellant of the questions presented for re-review, make this statement thereof:

1. Does this plaintiff have standing to attack the constitutionality of the statute creating an investigatory commission, on the grounds that its procedures deny due process to witnesses subpoenaed to appear before it, when this plaintiff has not been subpoenaed and does not anticipate that he will be subpoenaed?

2. Is a state statute unconstitutional which creates a commission to investigate possible violations of criminal laws, where the commission is limited to investigation and fact finding only, and is not authorized to adjudicate or make binding determinations which directly affect legal rights of individuals, on the grounds that the person subpoenaed as a witness, or who is being investigated, is not given all rights of a defendant in a criminal prosecution?

3. Do the acts of a district attorney in filing claimed false criminal charges against plaintiff, or the claimed plotting of state officials to kill other people, serve as grounds to declare a state statute creating a commission to investigate possible violations of criminal laws unconstitutionally administered, where the commission does not have any authority, supervision or control of such district attorney, and the claimed plotting of state officials to kill six other people has no causal connection with the administration of such statute?

#### STATEMENT OF THE CASE

Appellees make this their statement of the case as they deem it necessary in view of the omissions in that of appellant:

The statute, here sought to be declared unconstitutional, created the Labor-Management Commission of Inquiry because, in accordance with preamble of the statute, of the "unprecedented conditions" existing in the State of Louisiana, "under which there has been a shut-down of construction work involving industrial

development projects giving employment to thousands of persons and vitally affecting the public interest and threatening the orderly conduct of normal labor-management relations." (A-102). The Commission was only authorized to investigate "allegations and accusations of violations of the state and federal criminal laws" "in connection with the conditions above referred to", "in order to supplement and assist the efforts and activities of the several district attorneys, grand juries and other law enforcement officials and agencies of the State of Louisiana and of the United States" (A-103).

The Commission was to investigate and report only, as the statute provided,

"it shall be investigatory and fact-finding only"  
(A-105)

and

"The Commission shall have no authority to and it shall make no binding adjudications \*\*\*. No findings, conclusions, recommendations or reports of the commission may be used as *prima facie* or presumptive evidence of the guilt or innocence of any person in any court of law." (A-107)

and

"Copies of its report shall be immediately furnished to the governor, the lieutenant governor, the attorney-general and the legislature." (A-107)

The attack on the constitutionality of the statute is that "*a person subpoenaed before this trial agency as a potential accused or as a witness*" (Emphasis sup-

plied) (Appellant's brief—5) is denied due process and equal protection of the laws because such a *person* is "denied the right to the effective assistance of counsel, to examine and cross-examine the witnesses against him, to compulsory process for the attendance of witnesses in his behalf, to the benefit of effective and meaningful rules of evidence and to the benefit of meaningful and definable standards of guilt or innocence." (Appellant's brief—5)

The appellant, however, has not alleged in his complaint that *he personally* has been, or that he anticipates that *he personally* will be, "*a person subpoenaed*" to appear before the Labor-Management Commission of Inquiry "as a potential accused or as a witness".

The appellant does allege that prior to his filing of this complaint, the District Attorney of the Eighteenth Judicial District of the State of Louisiana for the Parish of Iberville had filed bills of information charging appellant with criminal conspiracy to commit a battery. He also alleges facts as to other persons. The statute under attack does not vest the Commission with any authority, supervision, or control of such District Attorney. The statute does provide "with respect to any of its findings, the commission may request the governor to refer the matter to the attorney general asking that he exercise the full authority conferred by Article VII, Section 56 of the Constitution in causing criminal prosecutions to be initiated in accordance with law." (A-108). Said Article VII, Section 56 of the Constitution of Louisiana provides that

the attorney general "shall exercise supervision over the several district attorneys throughout the State."

The only other provisions of the statute relative to any action that the Commission might take are that "it shall report its findings and recommendations to the proper federal and state authorities \*\*\* charged with the responsibility for prosecution of criminal offenses." (A-108), and "when directed to do so by the commission, the chairman shall file appropriate charges with the state and federal authorities having jurisdiction." (A-108).

The appellees filed a motion to dismiss the complaint on the grounds: (1) that the appellant lacked standing to attack the constitutionality of the statute, (2) that the statute was constitutional, and (3) that the complaint failed to state a claim under which a court of equity should enjoin a criminal prosecution. (A-20).

The three judge district court, after a hearing, granted the motion to dismiss (286 F. Supp. 537) on the grounds that the statute was constitutional under *Hannah v. Larche*, 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed 2d 1307.

### **SUMMARY OF ARGUMENT**

The plaintiff in his claim of unconstitutionality of the statute creating the Commission sues only as a citizen and not "as a potential accused or as a witness". He claims, however, that "a person subpoenaed" to testify before the Commission is denied "due process" in that a witness is denied the rights of an accused in a criminal prosecution. The defendants say that the

plaintiff does not have standing to bring this action, as he is neither a potential accused or a potential witness.

The plaintiff claims the statute is unconstitutional, for as he claims, a potential witness before the Commission is denied the rights of an accused in a criminal prosecution. The defendants say that inasmuch as the statute created the Commission to investigate and report only, and as the statute prohibits the Commission from adjudicating or making determinations which directly affect legal rights of any person, that under the jurisprudence of this Court, a witness is not entitled to the full panoply of judicial procedures, and the statute is constitutional.

The plaintiff claims the statute is discriminatorily administered, but the only allegations to support such claims have to do with matters wholly irrelevant and without causal relation with the administration of the statute.

## **ARGUMENT**

### **I.**

#### **LACK OF STANDING OF PLAINTIFF TO QUESTION CONSTITUTIONALITY OF STATUTE**

The plaintiff alleges only that he is a citizen of the United States, and of the State of Louisiana, and that he works as a laborer and is a member of a labor union, and with only such standing makes defendants herein the Governor of the State of Louisiana and six of the nine members of the Labor-Management Commission

of Inquiry. This Commission was created by the Legislature of Louisiana as Act 2 of the Extra Session of Louisiana for the year 1967 (La. Revised Statutes Title 23, Sections 880.1 through 880.18) (A-102). The plaintiff prays that said statute be declared unconstitutional and that defendants be enjoined from enforcing the provisions of said statute against him.

Plaintiff does *not* allege that he personally has been, or that he anticipates that he personally will be, subpoenaed to appear before said Commission "as a potential accused or as a witness." Plaintiff, however, contends, as a basis for his attack on the statute, that the statute is unconstitutional because it denies "a person subpoenaed" before the Commission due process, that is, that "a person subpoenaed" before the Commission is "denied the right to the effective assistance of counsel, to examine and cross-examine the witnesses against him, to compulsory process for the attendance of witnesses in his behalf, to the benefit of effective and meaningful rules of evidence, and the benefit of meaningful and definable standards of guilt or innocence." (Appellant's brief—5).

The statute attacked, in its preamble (A-102), sets forth: "unprecedented conditions presently exist in the state under which there has been a shut-down of construction work involving industrial development projects giving employment to thousands of persons and vitally affecting the public interest and threatening the orderly conduct of normal labor-management relations", and "in connection with the conditions above referred to, there have been allegations and accusations

of violations of the state and federal laws which should be thoroughly investigated in the public interest", and "in order to supplement and assist the efforts and activities of the several district attorneys, grand juries and other law enforcement officials and agencies of the State of Louisiana and of the United States, it is imperative that additional investigative facilities on a statewide basis be made available.", "it is essential that \*\*\* the facts causing or contributing to such conditions may be investigated". The statute then created the Labor-Management Commission of Inquiry with authority to investigate criminal violations in the labor-management area, and report only, viz:

"it shall be investigatory and fact finding only" (La. R.S. 23:880-6). (A-105).

"The commission shall have no authority to and shall make no binding adjudication." (La. R.S. 23:880-7) (A-107).

"No findings, conclusions, recommendations or reports of the commission may be used as prima facie or presumptive evidence of the guilt or innocence of any person in any court of law."

(La. R.S. 23:880-7) (A-107).

The jurisprudence of this Court is well settled that this plaintiff does not have the right to attack the constitutionality of this statute as he does not show injury to himself under the statute. The very basis of plaintiff's attack does not apply to him. And even if this Court decreed the statute unconstitutional, such a judgment would not give plaintiff any redress. Plaintiff does not allege that he is one who is "immedi-

ately harmed, or immediately threatened with harm", by the claimed challenged action of the Commission in denying "a person subpoenaed" "as a potential accused or as a witness" the due process of an accused in a criminal proceeding. We quote from *Poe v. Ullman*, 367 U.S. 497, 6 L. Ed 2d 989, 81 S. Ct. 1752, a holding, which it relied on and followed, viz:

"The best teaching of this Court's experience admonishes us not to entertain constitutional questions in advance of the strictest necessity." *Parker v. County of Los Angeles*, 338 US 327, 333, 94 L ed 114, 147, 70 S Ct 161. See also *Liverpool, N.Y. & P.S.S. Co. v. Emigration Comrs.* 113 US 33, 39, 28 L ed 899, 901, 5 S Ct 352.

"The various doctrines of 'standing', 'ripeness,' and 'mootness', which this Court has evolved with particular, though not exclusive, reference to such cases are but several manifestations—each having its own 'varied application'—of the primary conception that federal judicial power is to be exercised to strike down legislation, whether state or federal, only at the instance of one who is himself immediately harmed, or immediately threatened with harm, by the challenged action."

This Court said in *U.S. v. Raines*, 362 U.S. 17, 4 L. Ed 2d 524, 80 S. Ct. 519, viz:

"This Court, as is the case with all federal courts, has no jurisdiction to pronounce any statute, either of a State or of the United States, void, because irreconcilable with the Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies. In the exercise of that jurisdiction, it is bound by two rules, to

which it has rigidly adhered, one, never to anticipate a question of constitutional law in advance of the necessity of deciding it; the other never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Liverpool, N.Y. & P.S.S. Co. v. Commissioners of Emigration*, 113 US 33, 39, 28 L ed 899, 901, 5 S Ct 352. Kindred to these rules is the rule that one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional."

But the plaintiff argues that he brings this action for himself and "those similarly situated." This complaint cannot qualify as a Class Action, for the Rules of Civil Procedure require, viz:

Rule 23 (a) Prerequisites to a Class Action. "One or more members of a class may sue \*\*\* as representative parties on behalf of all only if \*\*\* (3) the claims \*\*\* of the representative parties are *typical* of the claims \*\*\* of the class \*\*\*" (Emphasis supplied)

Plaintiff's claim is not representative, as he has not been subpoenaed. For that matter, plaintiff has not alleged that any of "those similarly situated" have been subpoenaed.

In the case of *Bailey v. Patterson*, 369 U.S. 31, 7 L. Ed. 2d 512, 82 S. Ct. 549, this Court held that persons "cannot represent a class of whom they are not a part". Thus, even if it could be eked out of the com-

plaint that some of "those similarly situated" had been subpoenaed, this plaintiff cannot challenge the statute for them, as he has not been subpoenaed. We quote from that case, viz:

"Appellants lack standing to enjoin criminal prosecutions under Mississippi's breach-of-peace statutes, since they do not allege that they have been prosecuted or threatened with prosecution under them. They cannot represent a class of whom they are not a part. McCabe v. Atchison, T. & S. F. R. Co. 235 US 151, 162, 163, 59 L ed 169, 174, 35 S Ct 69."

The district court held that this suit was not a class action.

We submit that the plaintiff is without standing to question the constitutionality of this statute.

## II.

### **STATUTE IS CONSTITUTIONAL**

The Louisiana Legislature in Special Session called for that purpose in 1967 enacted Act 2 (La. R.S. 23:880.1-880.18) (A-102) creating a "Labor-Management Commission of Inquiry" to investigate and find facts relating to violations or possible violations of the criminal laws of Louisiana or of the United States in the field of labor-management.

In accordance with the declarations in said Act as to the reasons for the enactment thereof, there were: (1) unprecedeted conditions then existing in the state, under which there was a shut-down of construction work, involving industrial projects giving employ-

ment to thousands of people, vitally affecting the public interest, and threatening the orderly conduct of normal labor-management relations; (2) and, in connection with said conditions, it was imperative that *additional investigative facilities on a state-wide basis* be made available to investigate the allegations of state and federal criminal law violations, in order to supplement the several district attorneys and grand juries of the State, and to report to the Legislature and the Governor for action within their scope.

The Commission is composed of nine members appointed by the Governor, with three of such members being respectively from the public, labor and management. The Commission was authorized to "ascertain the facts" and "make findings with respect to any actual or probable violations of the criminal laws" in the labor-management area. The statute specifically limited the Commission to investigations and said, viz:

*"it shall be investigatory and fact finding only". (La. R.S. 23:880.6) (Emphasis supplied)*  
(A-105)

*"The Commission shall have no authority to and shall make no binding adjudication \* \* \*; however, it may, in its discretion, include in its findings the conclusions of the commission as to specific individuals or as to the general situation, or as to both, and it may make such recommendations for action to the governor as it deems appropriate. \* \* \*. No findings, conclusions, recommendations or reports of the commission may be used as *prima facie* or presumptive evidence of the guilt or innocence of any person in any court*

*of law.*" (La. R.S. 23:880.7) (Emphasis supplied) (A-107-8)

The Commission was required to report its findings to the Legislature and the Governor, etc., who could act thereon within their scope if they saw fit. We quote from the statute, viz:

"Copies of its report shall be immediately furnished to the governor, the lieutenant governor, the attorney-general and the legislature." (La. R.S. 23:880.7) (A-107)

The claimed basis of the attack on said statute is that it denies plaintiff "due process" as guaranteed by the Fourteenth Amendment to the U. S. Constitution, because it is claimed that "there is denied to a person compelled to appear before said Commission" to testify, the right of counsel, confrontation of witnesses against him, process for witnesses, etc.

(a)

#### **SIXTH AMENDMENT THROUGH FOURTEENTH AMENDMENT**

Any contention by plaintiff that the Fourteenth Amendment makes the Sixth Amendment applicable to these proceedings is clearly without substance. The Sixth Amendment is applicable to "*criminal prosecutions*", and the investigatory proceedings of this Commission are not criminal prosecutions. The Sixth Amendment requires that *in a criminal prosecution* the accused,

"\* \* \* be confronted with the witnesses against him; to have compulsory process for obtaining

witnesses in his favor, and to have the assistance of Counsel for his defense."

In the case of *U. S. v. Zucker*, 161 U.S. 475, 40 L. Ed. 777, 16 S. Ct. 641, this Court said, viz:

"The 6th Amendment relates to a prosecution of an accused person which is technically criminal in its nature."

\*\*\*

"The words in the 6th Amendment, 'to be informed of the nature and cause of the accusation,' obviously refer to a person accused of crime, whether a felony or misdemeanor, for which he is prosecuted by indictment or presentment, or in some other authorized mode which may involve his personal security. So the clause declaring that the accused, in a criminal prosecution, is entitled 'to be confronted with the witnesses against him,' has no reference to any proceeding (although the evidence therein may disclose, of necessity, the commission of a public offense) which is not directly against a person who is accused, and upon whom a fine or imprisonment or both may be imposed."

In the case of *Hannah v. Larche*, supra, this court in a case involving an investigatory commission, which did not adjudicate, just as the present commission only investigates and cannot adjudicate, held that the Sixth Amendment was not there applicable, viz:

"Although the respondents contend that the procedures adopted by the Commission also violate their rights under the Sixth Amendment, their claim does not merit extensive discussion. That

Amendment is specifically limited to 'criminal prosecutions', and the proceedings of the Commission clearly do not fall within the category."

In *Escobedo v. Illinois*, 378 U.S. 478, 12 L. Ed 2d 977, 84 S. Ct. 1758 the question was as to the beginning of a "criminal prosecution" which would fix the time when the Sixth Amendment would apply. In that case this Court recognized that under *Gideon v. Wainwright*, 372 U.S. 335, 9 L. Ed. 2d 799, 83 S. Ct. 792, the Sixth Amendment's provision, that in all "criminal prosecutions" the accused shall enjoy the right to have the assistance of counsel for his defense, was made obligatory upon the states by the Fourteenth Amendment. This Court in *Escobedo* then held that the beginning of the prosecution did not have to wait for the formal indictment to fix the time when an accused was entitled to counsel, and held that criminal prosecution in reality commenced when the process focused on the person up to such time being investigated, and its purpose then changed from investigation to an effort to elicit a confession. We quote, viz:

"We hold, therefore, that where, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and has been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied

'the Assistance of Counsel' in violation of the Sixth Amendment to the Constitution as 'made obligatory upon the States by the Fourteenth Amendment,' *Gideon v. Wainwright*, 372 US, at 342, 9 L ed 2d at 804, 93 ALR2d 733, and no statement elicited by the police during the interrogation may be used against him at a criminal trial."

The specific holding in *Escobedo* is not applicable to this statute, even to a person subpoenaed to testify before the Commission, as the Statute recognizes the right to assistance of counsel by a witness, viz:

"La. R.S. 23:880.10—Rights of Witnesses; right to counsel. \* \* \*

"B. A witness summoned to appear before the commission shall have the right to be accompanied by counsel, who may advise him of his rights  
\* \* \*"

(A-113).

We submit that the Sixth Amendment through the Fourteenth Amendment is not applicable to this statute, as the investigation authorized by this statute is not a "criminal prosecution", and even if it were, as to the right of counsel, under *Escobedo*, the statute provides for the right of counsel.

(b)

## FIFTH AMENDMENT THROUGH FOURTEENTH AMENDMENT

The Fifth Amendment provision that "no person \* \* \* shall be compelled in any criminal case to be a witness against himself \* \* \*" is complied with by the

statute as this immunity from self-incrimination is recognized by the statute, (La. R.S. 23:880.13) (A-115).

We submit that this statute fully recognizes the rights of a witness under the Fifth Amendment through the Fourteenth Amendment.

(c)

### FOURTEENTH AMENDMENT DUE PROCESS

The plaintiff argues that the statute denies "due process" as required by the Fourteenth Amendment by denying to a "person compelled to appear before said Commission" to testify, the right of counsel, confrontation, process, etc. The plaintiff also claims the statute, for the same reasons, denies "privileges and immunities" and "equal protection of the law" as also guaranteed by the Fourteenth Amendment. As the basis for the attack on the statute is that it denies counsel, confrontation, process, etc., we will treat all such contentions as a claim that "due process" has been denied.

The case of *Hannah v. Larche*, *supra*, is decisive of this issue. By comparison, the rules of procedure here attacked are identical with the rules of procedure that were under attack before this Court there. There the commission was held to be "purely investigative and fact-finding". Here the commission is likewise "investigatory and ~~fact~~ finding only". There, this Court found that the commission

"\* \* \* does not adjudicate. It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. Nor does it indict, punish, or impose any legal sanctions. It does not make determinations depriving anyone of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action."

The present statute likewise does not permit the Labor-Management Commission of Inquiry to adjudicate ("The commission shall \* \* \* make no binding adjudication" La. R.S. 23:880.7) (A-107). The Labor-Management Commission does not hold trials or determine anyone's civil or criminal liability ("it shall be investigatory only" La. R.S. 23:880.6) (A-105). It does not issue orders (id.). Nor does it indict, punish, or impose any legal sanctions (id.). It does not make determinations depriving anyone of his life, liberty, or property ("no findings \* \* \* may be used as prima facia or presumptive evidence of the guilt or innocence of any person in any court of law" La. R.S. 23:880.7 (A-107). In short, the Labor-Management Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may be used as the basis for legislative or executive action as the statute only provides that the Commission's reports,

"shall be immediately furnished to the governor,

the lieutenant governor, the attorney-general and the legislature". (La. R.S. 23:880.7) (A-107)

This Court there held that when governmental action does not partake of an adjudication, in a case such as here, when a general fact-finding investigation is being conducted, it is not necessary that the full panoply of judicial procedures be used, and that since that commission did not adjudicate, it was not bound by adjudicatory procedures.

But, the plaintiffs in that case, just as the plaintiff here, contended that the commission's proceedings "might irreparably harm those being investigated by subjecting them to public opprobrium and scorn, the distinct likelihood of losing their jobs, and the possibility of criminal prosecutions."

That is the heavy argument of this plaintiff. This Court answered that contention there by saying that *such consequences would only be collateral* and would not affect the legitimacy of the Commission's investigative function. We quote, viz:

"However, even if such *collateral consequences* were to flow from the Commission's investigations, they would not be the result of any affirmative determinations made by the Commission, and they would not affect the legitimacy of the Commission's investigative function." (Emphasis supplied)

*On the point that a legitimate investigative function could not be thwarted because of some possible collateral consequences*, this Court there cited *Sinclair v. United States*, 279 U.S. 263, 73 L. Ed. 692, 49 S. Ct.

268, holding that Congress' legitimate right to investigate was not affected by the fact that information disclosed at the investigation might have been used in a subsequent criminal prosecution. This Court there said, viz:

"It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power, is not abridged because the information sought to be elicited may also be used in such suits."

This Court also cited *McGrain v. Daugherty*, 273 U.S. 135, 71 L. Ed. 580, 47 S. Ct. 319, which held that a regular congressional investigation was not rendered invalid merely because it might possibly disclose crime or wrongdoing on the part of witnesses summoned to appear at the investigation. This Court there said, viz:

"Nor do we think it a valid objection to the investigation that it might possibly disclose crime or wrongdoing on his part."

The preamble of the statute here, setting forth unprecedented conditions, called for those in charge of government in Louisiana to do something about the situation. In order to act, the Legislature needed facts. In order to act, the Governor needed facts. The highest purpose of government is law and order and this Commission was to investigate to ascertain facts to aid those in charge of government to maintain law and order.

This Court in *Hannah* said that one of the considerations in determining "due process" in investigating procedures was the possible burden of applying judicial procedures. It said, viz:

"On the other hand, the investigative process could be completely disrupted if investigative hearings were transformed into trial-like proceedings, and if persons who might be indirectly affected by any investigation were given an absolute right to cross-examine every witness called to testify. Fact-finding agencies without any power to adjudicate would be diverted from their legitimate duties and would be plagued by the injection of collateral issues that would make the investigation interminable. Even a person not called as a witness could demand the right to appear at the hearing, cross-examine any witness whose testimony or sworn affidavit allegedly defamed or incriminated him, and call an unlimited number of witnesses of his own selection. This type of proceeding would make a shambles of the investigation and stifle the agency in its gathering of facts."

*Hannah* then noted that the rules of procedure for that commission were not historically foreign to other forms of investigation in our country, and said, viz:

"Far from being unique, the Rules of Procedure adopted by the Commission are similar to those which, as shown by the Appendix to this opinion, have traditionally governed the proceedings of the vast majority of governmental investigating agencies."

And those are the same rules of procedure fixed for

the Labor-Management Commission by the statute here attacked.

This Court discussed in *Hannah* numerous executive and legislative investigating commissions and demonstrated that where a commission did not adjudicate, cross-examination by a witness of other witnesses was not permitted. For example, the Court noted that the Commission's rules of procedure were the same as the U. S. House of Representatives "fair play" committee rules. Those are the same rules adopted for this Labor-Management Commission. We quote from *Hannah*, viz:

"After extensive debate and hearings, HR 6127 was finally passed by both Houses of Congress, and the House "fair play" rules, which make no provision for advance notice, confrontation, or cross-examination, were adopted in preference to the more protective rules suggested in S. 83."

This Court, in *Hannah*, referred to the procedures before grand juries. We quote, viz:

"Having considered the procedures traditionally followed by executive and legislative investigating agencies, we think it would be profitable at this point to discuss the oldest and, perhaps, the best known of all investigative bodies, the grand jury. It has never been considered necessary to grant a witness summoned before the grand jury the right to refuse to testify merely because he did not have access to the identity and testimony of prior witnesses. Nor has it ever been considered essential that a person being investigated by the grand jury be permitted to come before that body

and cross-examine witnesses who may have accused him of wrongdoing. Undoubtedly, the procedural rights claimed by the respondents have not been extended to grand jury hearings because of the disruptive influence their injection would have on the proceedings, and also because the grand jury merely investigates and reports. It does not try."

This Court concluded in *Hannah*, viz.:

*"Thus, the purely investigative nature of the Commission's proceedings, the burden that the claimed rights would place upon those proceedings, and the traditional procedure of investigating agencies in general, leads us to conclude that the Commission's Rules of Procedure comport with the requirements of due process."* (Emphasis supplied)

The identical attack here made on this statute creating the Labor-Management Commission was made in the Louisiana courts in the case of *Martone v. Morgan*, 251 La. 993, 207 So. 2d 770; appeal to this Court (No. 216) dismissed on October 14, 1968, for want of a substantial federal question.—U.S.—21 L. ed. 2d 12, 89 S. Ct.—. The Louisiana Supreme Court dismissed the attack and held the statute constitutional. The attorney for the plaintiff in that suit is the same attorney representing the plaintiff in this complaint. The plaintiffs and courts have been changed, but the attack is otherwise identical.

As noted by the District Court in its opinion, (286 F. Supp. 537) (541), viz.:

"The plaintiffs in the instant case have not been called as witnesses before the Commission, and to allow them, along with the many others whom they claim to represent, to cross-examine witnesses and present evidence to the Commission would certainly 'make a shambles of the investigation and stifle the agency in its gathering of facts. We need but to look at the lengthy pleadings filed herein by plaintiffs to conclude that the court in *Hannah* was right when it said that if investigative hearings were transformed into trial-like proceedings the fact finding agency would be 'plagued by the injection of collateral issues that would make the investigation interminable.' For example, the plaintiff Jenkins alleges, *inter alia*, that the Governor of the State of Louisiana, together with members of the Labor-Management Commission, including the Dean of the Louisiana State University Law School, the Dean of the Tulane Law School, the president of a local bank, and others 'have \* \* \* singled out for murder \* \* \* six members of the Teamsters Local No. 5 of Baton Rouge, Louisiana'. He further alleges that these same gentlemen are using their 'great arsenal of power' 'to destroy the current power structure of the labor union aforesaid' (Teamsters Local No. 5 headed by one Edward Grady Partin) 'and to install a new power structure oriented and subservient to the James R. Hoffa group or clique of the International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America.' The plaintiff Jenkins then alleges that these same defendants have caused the arrest of the said Edward Grady Partin on a charge of aggravated assault and that their action 'is but a

response to the announcement of the candidacy of Honorable Robert F. Kennedy for the nomination for the presidency of the United States by the Democratic Party of the United States, in that the conspirators herein are hoping thereby to induce Edward Grady Partin to recant his testimony heretofore given against James R. Hoffa, to be used as a basis to obtain a new trial for and the consequent release from prison of James R. Hoffa prior to the democratic presidential nomination, so as thereby to thwart the nomination of the said Robert F. Kennedy who, as Attorney General of the United States, ordered and managed the prosecution and conviction of the said James R. Hoffa.'

"These are but examples of the twenty-one pages of allegations contained in the complaint filed herein by Jenkins. These are the issues that plaintiffs would like to inject into Commission hearings, and these are the issues plaintiffs would like to air out in open court before this tribunal. The entire history of these proceedings convinces this Court that plaintiffs are far more interested in obtaining a forum in which to publicize their extraordinary allegations than in obtaining an adjudication of issues pertaining to the constitutionality of the Act involved. We decline to allow them to do so here.

"A careful reading of the Act shows that plaintiffs' analysis thereof, as set forth in rather strained and extreme terms in the complaints filed herein, is simply not an accurate analysis of the powers, duties, and functions of the Commission

created thereby. We conclude instead, that as stated in *Hannah*:

“ \* \* \* the purely investigative nature of the Commission proceedings, the burden that the claimed rights would place upon those proceedings, and the traditional procedure of investigating agencies in general, leads us to conclude that the Commission rules of procedure comport with the requirements of due process.’ 80 S. Ct. at 1519.”

Appellees submit that the statute is constitutional.

But, even if some part of the procedures were unconstitutional, such would not authorize holding the entire statute unconstitutional, as it has a severability clause, which we quote, viz:

“Section 3. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.” (A-117).

### III.

#### **ACT NOT DISCRIMINATORILY ADMINISTERED**

The plaintiff in his secondly numbered of questions presented, says that the allegations of the complaint show that the statute has been applied in a discriminatory manner against plaintiff as a member of a labor union. But plaintiff does not set forth any al-

legation, insofar as he is concerned, which avers any causal connection between the statute and the claimed actions alleged.

We assume that plaintiff's legal premise is, as recognized by the great case of *Yick WO v. Hopkins*, 118 U.S. 356, 30 L. Ed. 220, 6 S. Ct. 1064, that when an otherwise valid legislation is sought to be applied in an unconstitutional manner, the courts will not sustain such an application. In *Yick WO v. Hopkins*, the statute, though valid on its face, was so administered "with an evil eye and an unequal hand" as to make unjust and illegal discriminations between persons in similar circumstances, material to their rights.

We will now discuss the various allegations in the complaint so that it will readily be revealed that there is no causal connection between the actions alleged and the administration of the statute here under attack.

The first allegation (A-7) as to the acts of discrimination in the actions of the Labor-Management Commission of Inquiry is that,

The district attorney, *while acting in concert with defendants herein*, filed criminal charges of criminal conspiracy to commit a battery against plaintiff, in the Eighteenth Judicial District Court of the State of Louisiana for the Parish of Iberville.

The constitution and laws of Louisiana are quite clear that the district attorney has entire charge and control over criminal prosecutions in his district, subject to the supervision of the Attorney General. Louisiana

Constitution Article 7, Sections 56, 58; La. Code of Criminal Procedure, Art. 61. *Kemp v. Stanley*, 204 La. 110, 15 So. 2d 1. The statute here attacked does not give the Labor-Management Commission of Inquiry any authority over the district attorney. Filing of these criminal charges against plaintiff was the act of the district attorney. Any holding here that the statute is unconstitutional could and would have no effect whatsoever on the district attorney in the prosecution of those charges. The Commission under the provisions of the statute is wholly without authority to require the district attorney to do anything. Therefore, we submit that the action of the district attorney in filing criminal charges against plaintiff is without any causal connection with the administration of the statute here sought to be declared unconstitutional. The claim that the district attorney acted "in concert with defendants" (A-7), under the law granting the district attorney solely the authority exercised, is wholly without substance. The fact that such charges, as claimed by plaintiff (A-8) might be without factual or legal basis, does not give them any causal connection with the Commission, as the Commission has no authority in connection with filing, prosecuting or dismissing said charges. The truth or falsity of the charges are matters before the court where the charges were filed and the defendants in administering the statute have no causal connection with them.

The next allegation by plaintiff is that the defendants have brought about the indictment and criminal prosecution of *other members* (not plaintiff) of plain-

tiff's labor union (A-10). The quick answer is that under the Constitution and laws of Louisiana, the grand jury is the only body authorized to indict, and the district attorney the only one authorized to prosecute, subject to the supervision of the Attorney General. (La. Code of Criminal Procedure, Articles 61, 443 et seq., La. Constitution, Art VII, Sec. 56, 58).

Then, by supplemental petition, the plaintiff made additional claims of discrimination by the Labor-Management Commision in administering the statute. The plaintiff alleged (A-24) that,

(a) Six members, not including plaintiff, have been singled out for murder by "officials of the Labor-Management Commission of Inquiry of Louisiana."

This allegation has no causal connection with the administration of the statute here attacked. This claim plays no part in the investigation authorized by the statute. This allegation is so irrelevant, as well as preposterous, as it does not deserve further comment.

The next allegation is that a "state trooper" and an "Assistant Attorney General of Louisiana" and an "investigator" of the Commission appeared at the residence of Mr. Wade McClanahan, a member of the same labor union as plaintiff, and searched his house with a search warrant and arrested said Wade McClanahan under a warrant of arrest (A-25). Though the said allegations as to the arrest of McClanahan are embellished with such absurdities as the claimed actions of the "Assistant Attorney General" in pointing a "30-30

caliber rifle at the head of McClanahan's" four year old son, nevertheless, such search and arrest have no causal connection with the administration of the statute here attacked. The Commission has no authority under the statute to search or arrest. The persons who did search and arrest were police officers. These allegations were based on an affidavit of a Mrs. Imogene Wiley Coleman (A-33), filed in the record by plaintiff. Her deposition was immediately taken by defendants (A-67); she testified, viz:

"Q. \*\*\* We are trying a lawsuit in which you have filed an affidavit, and I would like to examine you with reference to the facts which you have set forth in that affidavit. Do you know Mr. McClanahan, who just left the witness stand?

"A. I refuse to answer that question." (A-69)

Mrs. Coleman pleaded the Fifth Amendment and would not answer any questions about executing the affidavit. Mrs. Wade McClanahan in her deposition, likewise took the Fifth and refused to answer any questions (A-74).

The same lack of causal connection with the administration of the statute is the next allegation (A-28), that searches under search warrants of the offices of the labor union and the residence of another person were made by those authorized by law to execute such warrants. The Commission has no authority to issue or obtain a search warrant, nor, for that matter, to execute a search warrant.

The next allegation is that defendants, "engaged the services of one Billy D. Miller to attempt to bribe

Wade McClanahan to give a false statement incriminatory of Edward Grady Partin."

The relevancy of this allegation to a claimed discriminatory application of the statute here attacked is entirely absent. The plaintiff filed an affidavit in the record with the clerk by Wade McClanahan (A-37), in purported support of and apparently as the sole basis of this claimed attempt to bribe; but in the deposition of Wade McClanahan (A-51) taken immediately thereafter by defendants, he testified, viz:

"Q. Did you, on or about May 2nd, 1968, sign an affidavit before William C. Bradley, Notary Public of the Parish of East Baton Rouge?

"A. I refuse to answer that, ground of my constitutional right of the 5th Amendment, or anything I might say might be incriminating." (A-54)

"A. \*\*\* I'll take the 5th Amendment on anything you ask me." (A-55)

The various acts pleaded are totally unrelated to the administration of the statute here attacked. These various acts pleaded were not performed in, nor did they have any causal connection with, the administration of the statute here attacked.

We submit that the statute is not subject to attack on the claim that it has been discriminatorily administered, as there are no allegations to support such a claim.

The plaintiff, in addition to praying that the statute be held unconstitutional because of its claimed discriminatory administration likewise sought an injunction under Title 42 USCA, Section 1981, 1983 and

1988, and we quote from the prayer in the complaint (A-12), viz:

"(2) That a temporary restraining order \*\*\* issue \*\*\* restraining \*\*\* defendants \*\*\* from \*\*\* maintaining any action at law, civil or criminal, now pending in any of the courts of the State of Louisiana \*\*\*."

The plaintiff wants the court to enjoin his prosecution under the charges filed by the district attorney. The district court fully answered these contentions, and we quote that from its opinion (286 F. Supp. 537 (542)), viz:

'Reduced to essentials, the plaintiff, Jenkins, claims that he, who has not been called before the Labor-Management Commission of Inquiry, has nevertheless, as a result of hearings held by that Commission, been charged under four certain bills of information filed by the District Attorney of Iberville Parish, Louisiana, with criminal conspiracy to commit a battery with a dangerous weapon on four different people, all in violation of certain state statutes. He alleges that these charges are false and that he is not guilty. He alleges that he has not been tried as speedily as he would like, even though his own allegations certainly indicate no real violation of his constitutional right to a speedy trial. He alleges that these charges against him resulted from improper actions on the part of the Labor-Management Commission of Inquiry, and that there is no justification whatsoever for them having been filed against him. In other words, he alleges that he is not guilty.

"The plaintiff Sylvester merely claims that continued hearings by the Commission while charges are pending against him in Iberville Parish, Louisiana, will make it impossible for him to obtain an impartial jury for the trial of his case, and hence he seeks to have this Court enjoin all further hearings by the Commission so long as these charges against him are pending.

"All of these allegations of both plaintiffs are merely potential defenses to the criminal charges pending against them and may be urged if and when they are brought to trial on those charges. This Court must assume that the courts of Louisiana before whom plaintiffs' cases are pending, will perform their duty and will see that the plaintiffs are given a fair and impartial trial and that all of their constitutional and statutory rights are respected. Unless and until the contrary is shown, the allegations made herein by these plaintiffs are premature, and do not state a claim upon which this Court could or should grant relief. As stated by the United States Supreme Court in *Stefanelli v. Minard*, 342 U.S. 117, 72 S.Ct. 118, 96 L.Ed. 138, concerning intervention of the federal courts in cases of this kind:

'If we were to sanction this intervention, we would expose every state criminal prosecution to insupportable disruption. Every question of procedural due process of law—with its far-flung and undefined range—would invite a flanking movement against the system of State courts by resort to the federal forum, with review if need be to this Court, to determine the issue. Asserted unconstitutionality in the impaneling and selection

of the grand and petit juries, in the failure to appoint counsel, in the admission of a confession, *in the creation of an unfair trial atmosphere*, in the misconduct of the trial court—all would provide ready opportunities, which conscientious counsel might be bound to employ, to subvert the orderly, effective prosecution of local crime in local courts. To suggest these difficulties is to recognize their solution'. (Emphasis supplied.)

"Plaintiffs argue that the teaching of *Dombrowski v. Pfister*, 380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22, is controlling here. We disagree. None of the special circumstances noted in *Dombrowski* appear here. *Dombrowski* held that the statute there under attack operated on its face to abridge the plaintiff's First Amendment right of freedom of expression. The court there found that to force the plaintiff to wait and urge his defenses during his state court criminal trial would result in "a substantial loss or impairment of freedom of expression" in the meantime. Such is not the case here. *Dombrowski* is inapplicable."

**CONCLUSION**

We submit that the judgment below is correct and should be affirmed.

By attorneys,

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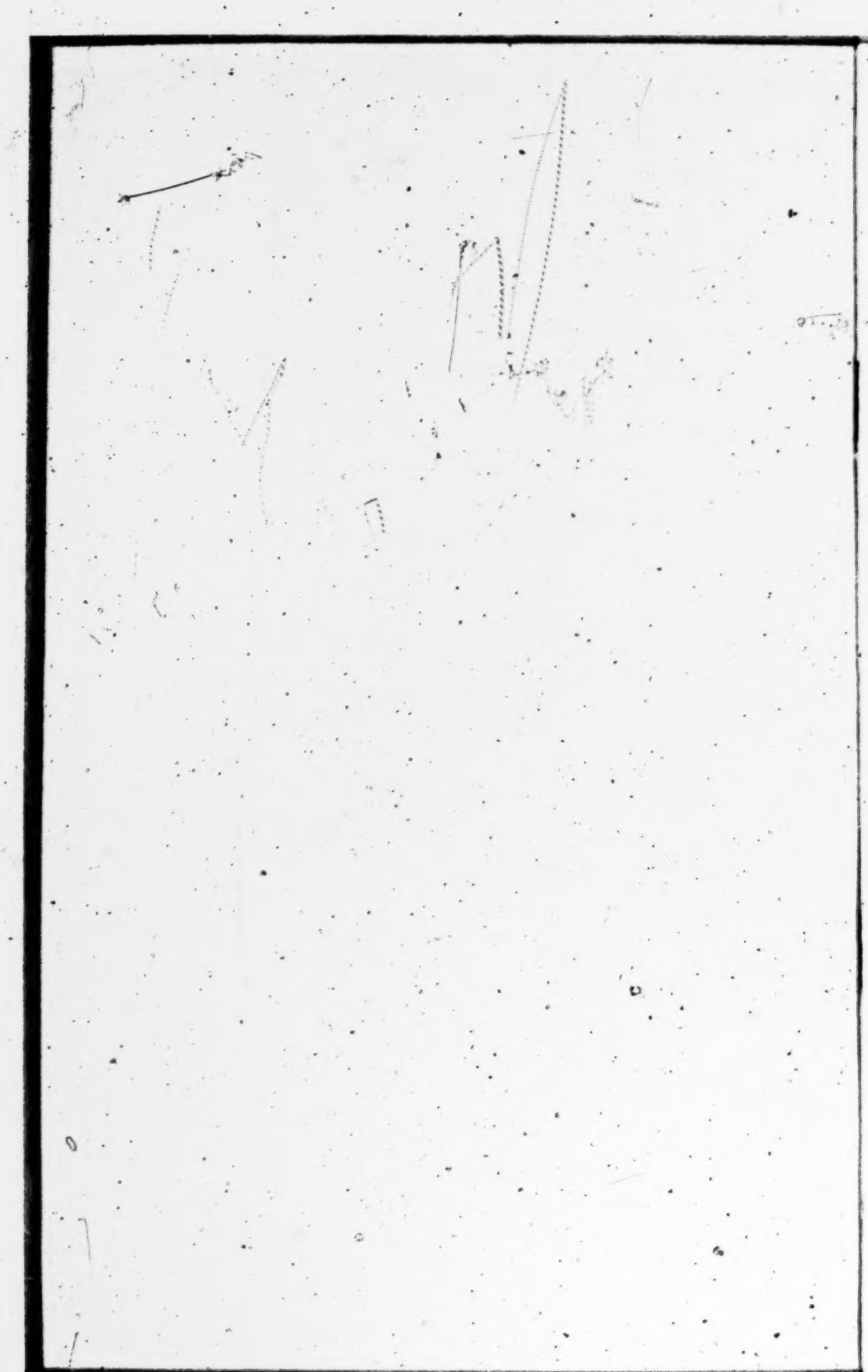
Attorneys for Appellees.

**PROOF OF SERVICE**

I, Ashton L. Stewart, Special Attorney General of the State of Louisiana, attorney for appellees herein and a member of the bar of the Supreme Court of the United States, hereby certify that on the \_\_\_\_\_ day of February, 1969, I served a copy of the foregoing brief on the appellant herein, by mailing said copy in a duly addressed envelope with first class postage prepaid to his attorney of record, J. Minos Simon, Esquire, 1408 Pinhook Road, Post Office Box 52116, OCS, Lafayette, Louisiana, 70501.

Baton Rouge, Louisiana, this 30<sup>th</sup> day of February, 1969.

  
ASHTON L. STEWART,  
Special Assistant Attorney General  
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JUN 26 1969

No. 548

JOHN F. DAVIS, CLERK

In the  
Supreme Court of the United States  
OCTOBER TERM, 1968

RODERICK JENKINS,

Appellant,

v.

JOHN JULIAN McKEITHEN, CECIL MORGAN,  
PAUL M. HEBERT, FLOYD C. BOSWELL,  
RALPH F. HOWE, A. R. JOHNSON, III,  
AND BURT S. TURNER,

Appellees.

APPLICATION FOR REHEARING

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Attorneys for Appellees



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AND BURT S. TURNER,

Appellees.

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APPLICATION FOR REHEARING

John Julian McKeithen, Cecil Morgan, Paul M. Hebert, Floyd C. Boswell, Ralph F. Howe, A. R. Johnson, III, and Burt S. Turner, defendants and appellees in the captioned cause, respectfully petition the Court for a rehearing in this case, wherein the judgment below was reversed and the cause was remanded for further proceedings. Further proceedings in this case on remand by the District Court will serve no useful end.

The gist of the prevailing opinion is that the statute is not unconstitutional on its face, but that according to the allegations of the complaint, a cause of action has been alleged if the "Commission is designed to and does indeed act in the manner alleged." We believe that the Court has erred in interpreting the allegations of the complaint. The allegations of the complaint, as amended, are only that the "defendants"

(A-6), "said officials" (A-6), "defendants" (A-7) "defendants" (A-9), "officials" (A-24), "defendants" (A-25), "defendants" (A-28) and "defendants" (A-30) have done the things complained of. The complaint has astutely avoided alleging that any of the actions alleged were actions of the Commission. Only six of the nine members of the Commission were made defendants. There are no allegations that any of the actions complained of were contained in any finding or report of the Commission and there could be no report or findings without a public hearing. The statute prohibits the Commission from acting unless there was a public hearing:

R.S. 23:880.12A. "The commission shall base its findings and reports only upon evidence and testimony given at public hearings. xxx."

The alleged actions of the defendant members of the Commission, even if true, would be contrary to and prohibited by the statute:

R.S. 23:880.12B. "It shall be a misdemeanor for any member of the Commission, its counsel or employees, to make public any evidence or testimony taken at a private investigation or at an executive session. xxx."

Therefore, the statute specifically would prevent the Commission from acting as alleged, unless there had been a public hearing, and the complaint does not allege a public hearing. The complaint says that the six members acted, and does not mention the Commission. The statute specifically prohibits the individual members from acting as alleged, and no part of the

actions of such individual members who are made defendants arise out of, or relate to, the application of the procedures of the statute in question. The statute has not been "administered" by actions of individual members when they act outside of and directly contrary to the provisions of such statute.

The Court observed in the opinion that the complaint was "inartfully drawn", and the Court then apparently treated the allegations that the "defendants" did the acts alleged as though it was the "Commission" which had so acted. This was error. The complainant has very astutely alleged that the acts complained of were by six members of the Commission—the complaint has not alleged the acts as those of the Commission in administering the act. The fact that only six of the nine members of the Commission were made defendants is most relevant on this score. So is the fact that the Commission itself was not made a defendant. We say that the complainant has intentionally so drawn the complaint because the complainant knows that the Commission has not held a public hearing where complainant was ever mentioned, nor has the Commission ever made any report or findings as to complainant, as such would be matters of public record.

Accordingly, we submit that the complainant has not alleged a cause of action, as there are in truth no allegations that the Commission itself, in administering the Act, has acted, but only the allegations that some of the members of the Commission have acted in the manner alleged. And, of course, even if the claimed ac-

tions of these individual members were true, their actions would be contrary to and in direct conflict with the provisions of the Act.

We respectfully submit that this petition for rehearing should be granted, and the judgment below affirmed.

Respectfully submitted,

JACK P. F. GREMILLION,  
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Baton Rouge, Louisiana.

ASHTON L. STEWART,  
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Attorneys for Appellees

**CERTIFICATE OF COUNSEL**

Pursuant to Rule 58, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

Baton Rouge, Louisiana, June \_\_, 1969.

---

ASHTON L. STEWART,  
Special Assistant Attorney  
General of the State of  
Louisiana.

Counsel for petitioner

**PROOF OF SERVICE**

I, Ashton L. Stewart, Special Attorney General of the State of Louisiana, attorney for applicants herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the \_\_\_ day of June, 1969, I served a copy of the foregoing Application for Rehearing on the appellant herein, by mailing said copy in a duly addressed envelope with first class postage prepaid to his attorney of record, J. Minos Simon, Esquire, 1408 Pinhook Road, Lafayette, Louisiana 70501.

Baton Rouge, Louisiana, this \_\_\_ day of June, 1969.

---

ASHTON L. STEWART,  
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Louisiana,  
604 Union Federal Building,  
Baton Rouge, Louisiana 70801.

Attorney for Appellees

# SUPREME COURT OF THE UNITED STATES

No. 548.—OCTOBER TERM, 1968.

Roderick Jenkins, Appellant,  
v.

John Julien McKeithen et al.

On Appeal From the  
United States District  
Court for the Eastern  
District of Louisiana.

[June 9, 1969.]

MR. JUSTICE MARSHALL announced the judgment of the Court and delivered an opinion in which MR. CHIEF JUSTICE WARREN and MR. JUSTICE BRENNAN join.

This case involves the constitutionality of a 1967 Louisiana statute, known as Act No. 2, which creates a body called the Labor-Management Commission of Inquiry. La. Rev. Stat. Ann. §§ 23:880.1–23:880.18 (Supp. 1969). The stated purpose of this Commission is “the investigation and findings of facts relating to violations or possible violations of criminal laws of the state of Louisiana or of the United States arising out of or in connection with matters in the field of labor-management relations . . . .” Act No. 2, Preamble, [1967 Extra. Sess.] La. Acts 3. Appellant, a member of a labor union, filed this suit in the District Court for the Eastern District of Louisiana challenging the constitutionality of Act No. 2 and of certain actions taken by state officials in the administration of the Act and otherwise. He sought both declaratory and injunctive relief. A three-judge court was convened and that court ultimately granted appellees’ motion to dismiss the complaint. *Jenkins v. McKeithen*, 286 F. Supp. 537 (D. C. E. D. La. 1968). We noted probable jurisdiction of an appeal brought under 28 U. S. C. § 1253.<sup>1</sup> We reverse.

<sup>1</sup> The constitutionality of the Act was upheld in *Martone v. Morgan*, 251 La. 993, 207 So. 2d 770, appeal dismissed, 393 U. S. 12 (1968) (petition for rehearing pending).

Since the case was decided on a motion to dismiss, a rather detailed examination of the structure of the Act and of the allegations of the complaint is necessary.

I.

The impetus for the formation of the Commission was, stated in the preamble of the Act. [1967 Extra. Sess.] La. Acts 2. It cited "unprecedented conditions" in the labor relations of the construction industry, and it particularly noted certain "allegations and accusations of violations of the state and federal criminal laws which should be thoroughly investigated in the public interest . . ." *Id.*, at 3. The additional investigative facilities of the Commission were thought necessary to "supplement and assist the efforts and activities of the several district attorneys, grand juries, and other law enforcement officials and agencies . . ." *Id.*, at 3.

The Commission is composed of nine members appointed by the Governor. La. Rev. Stat. Ann. § 23:880.1 (Supp. 1969). It is empowered to act only upon referral by the Governor when, in his opinion, there is substantial indication that there are or may be "widespread or continuing violations of existing criminal laws" affecting labor-management relations. La. Rev. Stat. Ann. § 23:880.5 (Supp. 1969). Upon referral by the Governor, the Commission is to proceed by public hearing to ascertain the facts pertaining to the alleged violations. La. Rev. Stat. Ann. § 23:880.6 (Supp. 1969). In order to carry out this function, the Commission has the power to make appropriate rules and regulations, to employ attorneys, investigators, and other staff, to compel the attendance of witnesses, to examine them under oath, and to require the production of books, records, and other evidence. La. Rev. Stat. Ann. § 23:880.8 (Supp. 1969). It can enforce its orders by petition to the state courts for contempt proceedings. La. Rev. Stat. Ann. § 23:880.9 (Supp. 1969).

The scope of the Commission's investigative authority is explicitly limited by the Act to violations of criminal laws. "The commission shall have no power, authority or jurisdiction to investigate, hold hearings or seek to ascertain the facts or make any reports or recommendations on any of the strictly civil aspects of any labor problem . . . ." La. Rev. Stat. Ann. § 23:880.6 (B) (Supp. 1969).<sup>2</sup> Further, the Commission has no power to participate in any manner in any civil proceeding, except, of course, contempt proceedings. *Ibid.* The limitation of the Commission to criminal matters is further reinforced by the provision of the Act allowing the Commission, at the request of the Governor, to assign its investigatory forces to the state police to assist the latter

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<sup>2</sup> "[I]ts power, authority or jurisdiction shall in no case extend to (1) any matter which is solely an 'unfair labor practice' or an 'unfair employment practice' or a legitimate labor dispute under the provisions of any federal or state law; or (2) any matter which relates to legitimate economic issues arising between labor and management or the manner in which such labor practices or economic issues are to be settled between the parties, whether by negotiation, arbitration, lockout or strike; or (3) any matter which relates solely to the internal affairs of labor organizations, including but not necessarily restricted to membership policies, election procedures, membership rights and like matters; or (4) any alleged acts of violence or threats of violence or so-called 'mass picketing,' or like conduct by either an employer or a union, which is not related to bribery or extortion, as defined by law, but which is related only to an organizational objective of a labor union or which is related only to furthering the interests of one side or the other in a 'labor dispute,' as that term is defined by federal or state law, such conduct being already regulated by and subject to the police power of the state, exercised through such agencies as the Division of State Police; or (5) any matter which relates solely to the internal affairs of any business organization, including but not necessarily restricted to its labor and business policy and general operations, or (6) any matters which constitute a combination of any two or more of these." La. Rev. Stat. Ann. § 23:880.6 (B) (Supp. 1969).

in their investigatory activities. La. Rev. Stat. Ann. § 23:880.6 (C) (Supp. 1969).

The Commission is required to determine, in public findings, whether there is probable cause to believe violations of the criminal laws have occurred. La. Rev. Stat. Ann. § 23:880.7 (A) (Supp. 1969). Its power is limited to making these findings and recommendations:

"The commission shall have no authority to and it shall make no binding adjudication with respect to such violation or violations; however, it may, in its discretion, include in its findings the conclusions of the commission as to specific individuals . . . and it may make such recommendations for action to the governor as it deems appropriate." *Ibid.*

The findings are to be a matter of public record, La. Rev. Stat. Ann. § 23:880.15 (B) (Supp. 1969), although they may not be used as *prima facie* or presumptive evidence of guilt or innocence in any court of law, La. Rev. Stat. Ann. § 23:880.7 (A) (Supp. 1969). The Commission is required to report its findings to the proper state or federal authorities if it finds there is probable cause to believe that violations of the criminal laws have occurred, and it may file appropriate charges. La. Rev. Stat. Ann. § 23:880.7 (B) (Supp. 1969). Finally, the Commission may request the Governor to refer matters to the State Attorney General asking the latter to exercise his authority to cause criminal prosecutions to be instituted. La. Rev. Stat. Ann. § 23:880.7 (D) (1967). Nothing in the Act makes any provision for preparation of findings or reports for submission to the Governor or the legislature for the explicit purpose of legislative action. Indeed, the preamble of the Act and the Act itself make it clear that the purpose of the Commission is to supplement the activities of the State's law enforcement agencies in one narrowly defined area.

As indicated above, the Commission has the power to compel the attendance of witnesses. A witness is given notice of the general subject matter of the investigation before being asked to appear and testify. La. Rev. Stat. Ann. § 23:880.10 (A) (Supp. 1969). A witness has the right to the presence and advice of counsel, "subject to such reasonable limitations as the commission may impose in order to prevent obstruction of or interference with the orderly conduct of the hearing." La. Rev. Stat. Ann. § 23:880.10 (B) (Supp. 1969). Counsel may question his client as to any relevant matters, *ibid.*, but the right of a witness or his counsel to examine other witnesses is limited:

"In no event shall counsel for any witness have any right to examine or cross-examine any other witness but he may submit to the commission proposed questions to be asked of any other witness appearing before the commission, and the commission shall ask the witness such of the questions as it deems to be appropriate to its inquiry." *Ibid.*

With one limited exception to be discussed below, neither a witness nor any other private party has the right to call anyone to testify before the Commission.

Although the Commission must base its findings and reports only on evidence and testimony given at public hearings, the Act does provide for executive session when it appears that the testimony to be given "may tend to degrade, defame or incriminate any person." La. Rev. Stat. Ann. § 23:880.12 (A) (Supp. 1969). In executive session the Commission must allow the person who might be degraded, defamed, or incriminated an opportunity to appear and be heard, and to call a reasonable number of witnesses on his behalf. *Ibid.* However, the Commission may decide that the evidence or testimony shall be heard in a public hearing, regardless of its effect on any particular person. *Ibid.* In that case, the person

affected has the right to appear as a "voluntary witness" and may submit "pertinent" statements of others. *Ibid.* He may submit a list of additional witnesses, but subpoenas will be issued only in the discretion of the Commission. *Ibid.*; see also La. Rev. Stat. Ann. § 23:930.12(C) (Supp. 1969).

## II.

Appellant's complaint named as defendants the Governor of Louisiana and six members of the Commission. The complaint presented, *inter alia*, the question of whether the provisions of Act No. 2 violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Appellant alleged that the Commission was an executive trial agency "aimed at conducting public trials concerning criminal law violations," and that its function was publicly to condemn. Appellant asserted that the defendants

"in connection with the administration of the provisions of said Act, have singled out the complainant and members of Teamsters Local No. 5 as a special class of persons for repressive and willfully punitive action . . . in furtherance of which a deliberate effort has been made and continues to be made by such officials . . . to destroy the power structure of the labor union aforesaid . . . ."

More specifically, the complaint alleged that defendants and their agents, acting under color of law and in conspiracy, procured false statements of criminal activities and used such statements to initiate baseless criminal proceedings against appellant, that they intimidated and coerced public officials into filing and prosecuting false criminal charges against appellant, and that they knowingly, willfully, and purposefully intimidated state court judges having under consideration legal controversies involving appellant. These acts of defendants allegedly

denied plaintiff and all others similarly situated of "rights, privileges and immunities secured to them by the Constitution and laws of the United States." Finally, appellant alleged that the defendants intended to continue to deprive him and others of their rights and that there was no "plain, adequate or efficient remedy at law."

Appellant prayed that a three-judge district court be convened, that a temporary restraining order issue, that Act No. 2 be declared unconstitutional, that all civil and criminal actions against appellant be permanently restrained, and that other unspecified relief be granted.

Temporary relief was denied by the District Court and a three-judge court was empanelled to hear the case. Defendants answered and moved to dismiss. They alleged that appellant lacked standing to question the constitutionality of Act No. 2 and that the complaint failed to state a cause of action. Thereafter, appellant filed a "Supplemental and Amending Petition" in which he alleged, in some detail, that defendants had continued the course of action described in the original complaint. After a hearing, the court dismissed the complaint. *Jenkins v. McKeithen, supra.*

The court, relying largely on the opinion of the Louisiana Supreme Court in *Martone v. Morgan*, 251 La. 993, 207 So. 2d 770, appeal dismissed, 393 U. S. 12 (1968) (petition for rehearing pending), held that this Court's decision in *Hannah v. Larche*, 363 U. S. 420 (1960), was dispositive of the issue of the constitutionality of the Act. The court further ruled that appellant had not stated any other claim for relief under §§ 1981, 1983, and 1988 of Title 42, United States Code. Rather, the court held that the other matters sought to be raised in the complaint were merely potential defenses to the pending criminal charges and that appellant had not alleged any basis for restraining prosecution of those charges. Finally, the court ruled that appellant's suit was not a

(1942); cf. *N.A.A.C.P. v. Alabama*, 357 U. S. 449, 460-463 (1958). Finally, in the circumstances of the present case, we do not regard appellant's opportunity to defend any criminal prosecutions as sufficient to deprive him of standing to challenge the Act. Cf. *United States v. Los Angeles & S. L. R. R.*, 273 U. S. 299 (1927). Appellant's allegations go beyond the normal publicity attending criminal prosecution; he alleges a concerted attempt publicly to brand him a criminal without a trial. Further, he alleges that he has been unsuccessful in his attempts to secure prosecution of the charges against him.

We hold that appellant's complaint contains sufficient allegations of direct and substantial injury to his own legally protected interests to accord him standing to challenge the constitutionality of Act No. 2.

#### IV.

We thus reach the merits of appellant's contention that Act No. 2 is unconstitutional. Appellant's complaint is long and artfully drawn; it contains many allegations of wrongdoing on the part of the Commission and other state officials. But the only issue presented by this aspect of the case is whether the Act creating the Commission is constitutional, either on its face or as applied. Many of appellant's allegations are relevant to this latter contention, but many involve issues that the court below ruled were properly matters to be raised in defense of any criminal prosecutions which might take place. We will deal with those allegations in the final section of this opinion.

The State, like the court below, relies heavily on this Court's decision in *Hannah v. Larche*, *supra*. In *Hannah*, this Court upheld the Civil Rights Commission against challenges similar to those involved in the present case. Indeed, Act No. 2 was drafted with *Hannah* in mind and

the structure and powers of the Commission are similar to those of the Civil Rights Commission. See *Jenkins v. McKeithen, supra*, 286 F. Supp., at 540; *Martone v. Morgan, supra*. We cannot agree, however, that *Hannah* controls the present case, for we think that there are crucial differences between the issues presented by this complaint and the issues in *Hannah*.

The appellants in *Hannah* were persons subpoenaed to appear before the Civil Rights Commission in connection with complaints about deprivations of voting rights. They objected to the Civil Rights Commission's rules about nondisclosure of the complainants and about limitations on the right to confront and cross-examine witnesses. This Court ruled that the Commission's rules were consistent with the Due Process Clause of the Fifth Amendment. The Court noted that

“[d]ue process is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts . . . Whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding, are all considerations which must be taken into account.”

363 U. S., at 442.

In rejecting appellants' challenge to the Civil Rights Commission's procedures, the Court placed great emphasis on the investigatory function of the Commission:

“[I]ts function is purely investigative and fact-finding. It does not adjudicate. It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. Nor does it indict, punish, or impose any legal sanctions. It does not make

determinations depriving any one of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative and executive action." 363 U. S., at 441.

The Court noted that any adverse consequences to those being investigated, such as subjecting them to public opprobrium, were purely conjectural, and, in any case, were merely collateral and "not . . . the result of any affirmative determinations made by the Commission . . ." 363 U. S., at 443. *Morgan v. United States*, 304 U. S. 1 (1938), *Joint Anti-Fascist Refugee Committee v. McGrath*, *supra*, and *Greene v. McElroy*, *supra*, were distinguished on the ground that "those cases . . . involved . . . determinations in the nature of adjudications affecting legal rights." 363 U. S., at 451.

We reaffirm the decision in *Hannah*. In our view, however, the Commission in the present case differs in a substantial respect from the Civil Rights Commission and the other examples cited by the Court in *Hannah*. It is true, as the Supreme Court of Louisiana has held, *Martone v. Morgan*, *supra*, that the Commission does not adjudicate in sense that a court does, nor does the Commission conduct, strictly speaking, a criminal proceeding. Nevertheless, the Act, when analyzed in light of the allegations of the complaint, makes it clear that the Commission exercises a function very much akin to an official adjudication of criminal culpability. See *Joint Anti-Fascist Refugee Committee v. McGrath*, *supra*.

The Commission is limited to criminal law violations; the Act explicitly provides that the Commission shall have no jurisdiction over civil matters in the labor-management relations field. Indeed, the Commission is even

limited to certain types of criminal activities.<sup>4</sup> As noted above, nothing in the Act indicates that the Commission's findings are to be used for legislative purposes. Rather, everything in the Act points to the fact that it is concerned only with exposing violations of criminal laws by specific individuals. In short, the Commission very clearly exercises an accusatory function; it is empowered to be used and allegedly is used to find named individuals guilty of violating the criminal laws of Louisiana and the United States and to brand them as criminals in public.

Given this view of the purpose of the Labor-Management Commission of Inquiry, we agree with Justice Frankfurter, concurring in *Hannah v. Larche*:

"Were the [Civil Rights] Commission exercising an accusatory function, were its duty to find that named individuals were responsible for wrongful deprivation of voting rights and to advertise such finding or to serve as part of the process of criminal prosecution, the rigorous protections relevant to criminal prosecutions might well be the controlling starting-point for assessing the protection which the Commission's procedure provides." 363 U. S., at 488.

When viewed from this perspective, it is clear the procedures of the Commission do not meet the minimal requirements made obligatory on the States by the Due Process Clause of the Fourteenth Amendment. Specifically, the Act severely limits the right of a person being investigated to confront and cross-examine the witnesses against him. Only a person appearing as a witness may cross-examine other witnesses. Cross-examination is further limited to those questions which the Commission "deems appropriate to its inquiry," and

<sup>4</sup> See n. 2, *supra*.

proper class action under Rule 23 of the Federal Rules of Civil Procedure.<sup>8</sup> The court did not explicitly rule on the issue of whether appellant lacked standing to challenge the Act.

Appellant presents two questions for review in this Court: Whether Act No. 2 is constitutional and whether the complaint otherwise states a cause of action under 28 U. S. C. §§ 1981, 1983, and 1988.

### III.

We are met at the outset with the State's assertion that appellant lacks standing to attack the constitutionality of Act No. 2. This argument is based in part upon certain allegations in the complaint that Act No. 2 is unconstitutional because it denies to "a person compelled to appear before . . . [the] Commission" the right to effective assistance of counsel, the right of confrontation, and the right to compulsory process for the attendance of witnesses. Since appellant did not allege in his complaint that he was called to appear before the Commission or that he expected to be called, the State asserts that he lacks standing to assert the denial of rights to those who do appear. See, e. g., *Tileston v. Ullman*, 318 U. S. 44 (1943). Further, the State argues that appellant lacks standing because he cannot demonstrate that he has been, or will be, "injured" by the operation of the challenged statute. We cannot agree.

The present case was decided on the State's motion to dismiss, in which the State challenged appellant's standing to assert the constitutionality of the Act. As noted above, the court below made no explicit reference to the issue of standing. But since the question of standing goes to this Court's jurisdiction, see *Flast v. Cohen*, 392 U. S. 83, 94-101 (1968), we must decide the issue

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<sup>8</sup> Appellant does not assign this ruling as error on this appeal.

even though the court below passed over it without comment. Cf. *Tileston v. Ullman, supra*.

For the purposes of a motion to dismiss, the material allegations of the complaint are taken as admitted. See, e. g., *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.*, 382 U. S. 172, 174-175 (1965). And, the complaint is to be liberally construed in favor of plaintiff. See Fed. Rule Civ. Proc. 8(f); *Conley v. Gibson*, 355 U. S. 41 (1957). The complaint should not be dismissed unless it appears that appellant could "prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson, supra*, at 45-46. With these rules in mind, we turn to an examination of the allegations of appellant's complaint.

It is true, as the State asserts, that appellant alleges deprivations of rights of those who are or will be called to testify before the Commission and that he fails to allege that he was or will be called to testify. If this were the extent of appellant's allegations, we would agree that appellant lacks standing to challenge the Act. However, appellant's allegations are not limited to those mentioned by the State. Appellant alleged that the Commission was an "executive trial agency" whose function was to conduct public trials designed to find appellant and others guilty of violations of criminal laws, allegedly for the purpose of injuring him and destroying the labor union of which he was a member. More specifically, appellant alleged that

"said Commission of Inquiry exercises (a) an accusatory function, (b) its duty to find that named individuals are responsible for criminal law violations, (c) it must advertise such findings, and (d) its findings serve as part of the process of criminal prosecution . . . ."

Finally, the complaint alleged that the defendants, acting in concert with others and in connection with the admin-

istration of the Act, have actually engaged in a course of conduct designed publicly to brand appellant and others as criminals, including, as noted above, the filing of allegedly baseless criminal charges against appellant.

Thus, although the complaint is inaccurately drawn, it does allege that the Commission and those acting in concert with it have taken and will take in the future certain actions with respect to appellant. The issue is thus whether those allegations are sufficient to give appellant standing to challenge the constitutionality of the Act creating the Commission and the acts taken by the Commission under authority of that Act. We think that they are.

The concept of standing to sue, as we noted in *Flast v. Cohen, supra*, "is surrounded by the same complexities and vagaries that inhere in [the concept of] justiciability" in general. 392 U. S., at 98. Nevertheless, the outlines of the concept can be stated with some certainty. The indispensable requirement is, of course, that the party seeking relief allege "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions . . ." *Baker v. Carr*, 369 U. S. 186, 204 (1962); see *Flast v. Cohen, supra*; *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123, 151 (1951) (concurring opinion). In this sense, the concept of standing focuses on the party seeking relief, rather than on the precise nature of the relief sought. See *Flast v. Cohen, supra*, at 99-100. The decisions of this Court have also made it clear that something more than an "adversary interest" is necessary to confer standing. There must in addition be some connection between the official action challenged and some legally protected interest of the party challenging that action. See *Flast v. Cohen, supra*, at 101-106.

In the present case, it is clear that appellant possesses sufficient adversary interest to insure proper presentation of issues facing the Court. His allegations, if taken as true, indicate that the Commission and those acting in concert with it have carried out a series of public acts designed to injure him in various ways. Appellant's interest in his own reputation and in his economic well-being guarantee that the present proceeding will be an adversary one.

We also think that appellant has alleged that the Act's administration was the direct cause of sufficient injury to his own legally protected interests to accord him standing to challenge the validity of the Act. We are not presented with a case in which any injury to appellant is merely a collateral consequence of the actions of an investigative body. See *Hannah v. Larche, supra*, at 443; cf. *Sinclair v. United States*, 279 U. S. 263, 295 (1929); *McGrain v. Daugherty*, 273 U. S. 135, 179-180 (1927). Rather, it is alleged that the very purpose of the Commission is to find persons guilty of violating criminal laws without trial or procedural safeguards, and to publicize those findings. Moreover, we think that the personal and economic consequences alleged to flow from such actions are sufficient to meet the requirement that appellant prove a legally redressable injury. Those consequences would certainly be actionable if caused by a private party and thus should be sufficient to accord appellant standing. See *Greene v. McElroy*, 360 U. S. 474, 493, n. 22 (1959); *Joint Anti-Fascist Refugee Committee v. McGrath, supra*, at 140-141 (opinion of Burton, J.); *id.*, at 151-160 (Frankfurter, J., concurring). It is no answer that the Commission has not itself tried to impose any direct sanctions on appellant; it is enough that the Commission's alleged actions will have a substantial impact on him. See, e. g., *Columbia Broadcasting System, Inc. v. United States*, 316 U. S. 407

those questions must be submitted, presumably beforehand, in writing to the Commission. We have frequently emphasized that the right to confront and cross-examine witnesses is a fundamental aspect of procedural due process. See, e. g., *Willner v. Committee on Character and Fitness*, 373 U. S. 96, 103-104 (1963); *Greene v. McElroy*, *supra*, at 496-499, and cases cited. In the present context, where the Commission allegedly makes an actual finding that a specific individual is guilty of a crime, we think that due process requires the Commission to afford a person being investigated the right to confront and cross-examine the witnesses against him, subject only to traditional limitations on those rights. Cf. *Pointer v. Texas*, 380 U. S. 400 (1965).

The Commission's procedures also drastically limit the right of a person investigated to present evidence on his own behalf. It is true that he may appear and call a "reasonable number of witnesses" in executive session, but should the Commission decide to hold a public hearing, he is limited to presentation of his own testimony and the "pertinent" written statements of others. The right to present oral testimony from other witnesses and the power to compel attendance of those witnesses may be denied in the discretion of the Commission. The right to present evidence is, of course, essential to the fair hearing required by the Due Process Clause. See, e. g., *Morgan v. United States*, *supra*, at 18; *Baltimore & Ohio R. R. v. United States*, 298 U. S. 349, 368-369 (1936). And, as we have noted above, this right becomes particularly fundamental when the proceeding allegedly results in a finding that a particular individual was guilty of a crime. Cf. *Washington v. Texas*, 388 U. S. 14 (1967); *In re Oliver*, 333 U. S. 257, 273 (1948). We do not mean to say that the Commission may not impose reasonable restrictions on the number of witnesses and on the substance of their testi-

mony; we only hold that a person's right to present his case should not be conferred to the unfettered discretion of the Commission.

Appellant argues that the procedures contemplated by the Act are deficient in other respects. In particular, he alleges that the Act provides no meaningful rules of evidence and fails to provide standards of guilt or innocence. He also alleges that the Act deprives him of effective assistance of counsel. We have, however, said enough to demonstrate that appellant has alleged a cause of action for declaratory and injunctive relief. Whether the Due Process Clause requires that the Commission provide all the procedural protections afforded a defendant in a criminal prosecution, or whether something less is sufficient, are questions that we think should be initially answered by the District Court on remand. As we have noted, "[w]hether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors." *Hannah v. Larche, supra*, at 442. We think it inappropriate to rule on the extent to which the Commission's procedures may run afoul of the Due Process Clause on the basis of the record before us, barren as it is of any established facts. That issue is best decided in the first instance by the District Court in light of the evidence adduced at trial.

We do not mean to say that this same analysis applies to every body which has an accusatory function. The grand jury, for example, need not provide all the procedural guarantees alleged by appellant to be applicable to the Commission. As this Court noted in *Hannah*, "the grand jury merely investigates and reports. It does not try." 363 U. S., at 449. Moreover, "[t]he functions of that institution and its constitutional prerogatives are rooted in long centuries of Anglo-American history." *Id.*, at 489-490 (concurring opinion). Finally the grand jury is designed to interpose an inde-

pendent body of citizens between the accused and the prosecuting attorney and the court. See *Stirone v. United States*, 361 U. S. 212, 218 (1960); *Ex parte Bain*, 121 U. S. 1, 11 (1887); *Hannah v. Larche, supra*, 363 U. S., at 497-499 (dissenting opinion). Investigative bodies such as the Commission have no claim to specific constitutional sanction. In addition, the alleged function of the Commission is to make specific findings of guilt, not merely to investigate and recommend. Finally, it is clear from the Act and from the allegations of the complaint that the Commission is in no sense an "independent" body of citizens. Rather, its members serve at the pleasure of the Governor, La. Rev. Stat. Ann. § 23:880.1 (Supp. 1969), and it cannot act in the absence of a "referral" from the Governor, La. Rev. Stat. Ann. §§ 23:880.5, 23:880.6 (A) (Supp. 1969).

We also wish to emphasize that we do not hold that appellant is now entitled to declaratory or injunctive relief. We only hold that he has alleged a cause of action which may make such relief appropriate. It still remains for him to prove at trial that the Commission is designed to and does indeed act in the manner alleged in his complaint, and that its procedures fail to meet the requirements of due process.

## V.

As noted above, appellant also alleged in his complaint that defendants, and those acting in concert with them, have engaged in a course of conduct, both pursuant to the Act and otherwise, that has resulted in the filing of false criminal charges against appellant. He alleges numerous other related actions allegedly depriving him of his rights secured by the Constitution. The complaint seeks declaratory and injunctive relief with regard to these acts; in particular, appellant prayed that the District Court enjoin all civil and criminal actions pending

or to be instituted against him. To the extent that these allegations involve actions taken under the direct authority of Act No. 2, we think that they may properly be considered by the District Court in determining the constitutionality of the Act. However, the District Court characterized many of appellant's allegations as involving merely potential defenses to the criminal charges assertedly pending. In the exercise of its discretion and because the issues were "intertwined" with the issue of the constitutionality of the Act, the court passed upon the question of whether appellant had alleged a cause of action for declaratory and injunctive relief. Relying in part on its determination that the Act was constitutional, the court held that appellant had not stated a claim for declaratory or injunctive relief and that appellant's remedy was to defend any criminal prosecutions then pending or that might be brought. *Jenkins v. McKeithen, supra*, 286 F. Supp., at 542-543. Whether the court will take the same view of the propriety of passing on the question or of the merits in light of our holding and the evidence adduced at trial cannot be determined at this time. Accordingly, we think that issue should be left open for reconsideration on remand.

The judgment of the court below is reversed and the cause is remanded for further proceedings.

*It is so ordered.*

MR. JUSTICE DOUGLAS concurs in the result for the reasons stated in his dissenting opinion in *Hannah v. Larche*, 363 U. S. 420, 493-508 (1960).



# SUPREME COURT OF THE UNITED STATES

No. 548.—OCTOBER TERM, 1968.

Roderick Jenkins, Appellant,

v.

John Julien McKeithen et al.

On Appeal From the  
United States District  
Court for the Eastern  
District of Louisiana.

[June 9, 1969.]

MR. JUSTICE BLACK, concurring.

I concur in the Court's judgment and in much of what is said in the prevailing opinion. I cannot agree, however, to reaffirming *Hannah v. Larche*, 363 U. S. 420. I joined the dissent of MR. JUSTICE DOUGLAS in the *Hannah* case and still adhere to that dissent. The Louisiana law here, like the federal law considered in the *Hannah* case, is, in my judgment, nothing more nor less than a scheme for a nonjudicial tribunal to charge, try, convict, and punish people without courts, without juries, without lawyers, without witnesses—in short, without any of the procedural protections that the Bill of Rights provides. The Louisiana law is reminiscent of the old Parliamentary and Ecclesiastical Commission trials which took away the liberty of John Lilburn and his contemporaries without due process of law—that is, without giving them the benefit of a trial in accordance with the law of the land. For these reasons I believe that the Louisiana law denies due process of law.



# SUPREME COURT OF THE UNITED STATES

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[June 9, 1969.]

MR. JUSTICE HARLAN, whom MR. JUSTICE STEWART and MR. JUSTICE WHITE join, dissenting.

Swept up in a constitutional revolution of its own making, the Court has a tendency to lose sight of the principles that have traditionally defined and limited its role in our political system. Constitutional adjudication is a responsibility we cannot shirk. But it is a grave and extraordinary process, one of last resort. And when it cannot legitimately be avoided, it is a function that must be performed with the utmost circumspection and precision, lest the Court's opinions emanate radiations which unintentionally, and spuriously, indicate views on matters we have not fully considered.

Over the years, the Court has evolved a number of principles designed to assure that we act within our proper confines. Perhaps the most fundamental of these is that we adjudicate only when, and to the extent that, we are presented with an actual and concrete controversy. Today, in its haste to make new constitutional doctrine, the Court turns this principle on its head, as it attempts to create a controversy out of a complaint which alleges none. With respect, I must dissent.

## I.

Only last Term, in *Flast v. Cohen*, 392 U. S. 83 (1968), the Court reaffirmed the proposition that "when standing [to sue] is placed in issue in a case, the question is

whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue . . . ,” *id.*, at 99–100, that is, “whether there is a logical nexus between the status asserted and the claim sought to be adjudicated.” *Id.*, at 102. In the present context, this means, simply, that for a plaintiff to challenge a particular course of conduct pursued or threatened to be pursued by a defendant, it is not enough for the plaintiff to allege that he has or will be injured by the defendant; the plaintiff must further claim that the injury to him (or to those whom he has status to represent)<sup>1</sup> results from the particular course of conduct he challenges.

Appellant in the case at bar attacks the constitutional validity of certain specific statutory procedures of the Louisiana Labor-Management Commission of Inquiry. Applying the principle stated above, it is not sufficient that he may be injured by the Commission or its members in *some* way. The injury must be alleged to arise out of, or relate to, the application of the procedures in question. The most generous reading of appellant’s complaint cannot mask the simple truth that it falls short of this minimal requirement.

At the risk of wearying the reader, I must deal with appellant’s pleadings in some detail. The relevant portion of the complaint, and that relied upon by the Court, is part IV (“Facts”), which contains 17 operative paragraphs.

Paragraphs 1–3 identify the plaintiff and defendants.

Paragraphs 4–6 characterize the appellee Commission as an “executive trial agency,” and outline its investigative functions. Paragraph 7 avers that the Commission’s procedures for performing these functions are

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<sup>1</sup> As the prevailing opinion notes, *ante*, at 7–8, and n.3, appellant does not assign as error the District Court’s holding that this was not a proper class action.

constitutionally defective with respect to matters of counsel, confrontation, compulsory process, rules of evidence, standards of guilt, right of appeal, and self-incrimination. Nowhere, either directly or indirectly, do these paragraphs intimate that *appellant* (or for that matter, anyone else) has been affected by the procedures themselves and their asserted effects.

Paragraph 8 should be quoted in full:

"Furthermore complainant alleges that said defendants, their agents, representatives and employees, and those acting in concert with them, in connection with the administration of the provisions of said Act, have singled out complainant and members of Teamsters Local No. 5 as a special class of persons for repressive and willfully punitive action, solely because they are members of said Teamsters Local No. 5, in furtherance of which a deliberate effort has been made and continues to be made by said officials, spearheaded by defendant McKeithen, while acting under color of state law, to destroy the current power structure of the labor union aforesaid and said union to which complainant belongs as a member and through which he experiences economic survival, and to install a new power structure oriented and subservient to the James R. Hoffa group or clique of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; this effort has included and continues to include (a) the deliberate circulation for public consumption of willful falsehoods about members of said labor union, such as characterizing said members as 'hoodlums' and 'gangsters,' comparable in depravity to the sinister Mafia gangsters of underworld criminals, while masking such lawless conduct behind a verbal facade of law and order, (b) the indiscriminate filing of

criminal charges against members of said labor union, where there exists no justifiable basis therefor and the concomitant exaction of excessive bail bonds, (c) the intimidating of public officials into carrying out the tyrannical aims of such indiscriminate criminal prosecution, and (d) the dictatorial use of the powers of the office of Governor of Louisiana in furtherance thereof."

In paragraph 9, appellant avers, "as more specifically applies to him," that appellees conspired to file false criminal charges against him. Paragraphs 10-14 describe in detail the chronology and conduct of the resulting criminal proceedings.

Paragraph 15 alleges that appellees intimidated certain persons (not including appellant) in order to elicit false statements to bring about the prosecution of other persons (not including appellant).

Finally, paragraph 16 contains the usual averments requisite to equitable and declaratory relief, and paragraph 17 requests a temporary restraining order.

Reading and re-reading these many paragraphs of legal and factual averments, one cannot help but be struck by the conspicuous absence of any claim that *appellant* has been or will be *investigated* by the Commission, or called as a *witness* before it, or identified in its *findings*, or, indeed, subjected to any of its processes.<sup>2</sup> Can this lacuna be filled by implication? I believe not.

Only paragraphs 9-14 relate specifically to appellant, and they contain no hint that the filing of the criminal informations against him was the result of the Commission's use of any of the procedures which the Court today indicates are constitutionally suspect. And assuming, contrary to fact, see n. 1, *supra*, that appellant repre-

<sup>2</sup> And, of course, there is no suggestion that appellant ever requested that the Commission accord him any of the rights of whose absence he complains.

sents others besides himself in this action, the only other arguably germane paragraph is §8 (a), which alleges the "deliberate circulation for public consumption of willful falsehoods about members of said labor union." This paragraph conspicuously omits any suggestion that such "falsehoods" were the result of testimony before the Commission or that they were contained in the Commission's "findings"—a term that is repeatedly emphasized in the earlier description of the Commission's functions.

The complaint's utter failure to allege any connection between the injuries asserted to have been suffered by appellant and the procedures complained of is not, on any objective reading of the complaint, an accidental omission or the result of counsel's "inartfulness"—as my Brother MARSHALL would put it. In my view, the only plausible inference—especially when it is remembered that appellant was represented by counsel throughout this litigation—is that such allegations were omitted because appellant had no facts to support them.<sup>3</sup>

The prevailing opinion's strained construction of the complaint goes well beyond the principle, with which I have no quarrel, that federal pleadings should be most liberally construed. It entirely undermines an important function of the federal system of procedure—that of disposing of unmeritorious and unjusticiable claims at the outset, before the parties and courts must undergo the expense and time consumed by evidentiary hearings.

Accordingly, I would sustain the dismissal of the complaint on the ground that appellant has not shown himself to have standing to challenge the Commission's procedures.

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<sup>3</sup> This inference is supported by the Report of the Labor-Management Commission of Inquiry, filed in this Court, which, other than mentioning the litigation challenging the Commission, nowhere refers to this appellant.

## II.

Because the complaint is barren of any indication of the manner in which appellant is affected by the Commission's formal procedures, the prevailing opinion is required to make its own assumptions. It places appellant in the vague position of "a person being investigated" by the Commission, *ante*, at 15, 16, and thence proceeds to discuss the rights of such a person to confront witnesses and to offer evidence in his own behalf. The prevailing opinion appears understandably reluctant to commit itself to very much. As I read the opinion, it does not state that any of the Commission's procedures are actually unconstitutional, but holds only that there is enough latent in the complaint that the case should proceed to trial.

Of necessity, however, my Brother MARSHALL has to examine some of the constitutional issues sought to be raised by appellant in order to justify a remand, and his discussion leaves radiations which are, at least, unclear. Reluctant as I am, under the circumstances of this case, to discuss the merits, I therefore feel compelled to outline my own views. I am not certain to what extent they comport with those of the majority.

The prevailing opinion fails to articulate what I deem to be a constitutionally significant distinction between two kinds of governmental bodies. The first is an agency whose sole or predominant function, without serving any other public interest, is to expose and publicize the names of persons it finds guilty of wrongdoing. To the extent that such a determination—whether called a "finding" or an "adjudication"—finally and directly affects the substantial personal interests, I do not doubt that the Due Process Clause may require that it be accompanied by many of the traditional adjudicatory procedural safeguards. Cf. *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123 (1951).

By the terms of the Louisiana legislation, the appellee Commission is not of this sort. Its authority is "investigatory and fact finding only." La. Rev. Stat. Ann. § 23:880.6 (A). Its stated purpose is "to supplement and assist the efforts and activities of the several district attorneys, grand juries and other law enforcement officials and agencies of the State of Louisiana." Preamble to Act No. 2. Its duty, when it finds probable cause to believe that the criminal laws have been violated, is to "report its findings and recommendations to the proper federal and state authorities . . . charged with the responsibility for prosecuting criminal offenses," or to file charges itself. La. Rev. Stat. Ann. § 23:880.7 (B). The Commission has no authority to adjudicate a person's guilt or innocence, and its recommendations and findings have no legal consequences whatsoever. *Id.*, § 23:880.7 (A).

The Commission thus bears close resemblance to certain federal administrative agencies, *infra*, at 7-8, and to the offices of prosecuting attorneys. These agencies have one salient feature in common, which distinguishes them from those designed simply to "expose." None of them is the *final* arbiter of anyone's guilt or innocence. Each, rather, plays only a *preliminary* role, designed, in the usual course of events, to *initiate* a subsequent formal proceeding in which the accused will enjoy the full panoply of procedural safeguards. For this reason, and because such agencies could not otherwise practicably pursue their investigative functions, they have not been required to follow "adjudicatory" procedures.

I see no constitutionally relevant distinction between this State Commission and the federal administrative agencies that perform investigative functions designed to discover violations which may result in the initiation of criminal proceedings. In *Hanna v. Larche*, 363 U. S. 420, 445-448, 454-485 (1960), the Court expressly

condoned the denial of "rights such as appraisal, confrontation and cross-examination" in such "nonadjudicative, fact-finding investigations." *Id.*, at 446. The Court recognized, for example, that the Federal Trade Commission

"could not conduct an efficient investigation if persons being investigated were permitted to convert the investigation into a trial. We have found no authorities suggesting that the rules governing Federal Trade Commission investigations violate the Constitution, and this is understandable since any person investigated by the Federal Trade Commission will be accorded all the traditional judicial safeguards at a subsequent adjudicative proceeding. . . ." *Id.*, at 446.

And the Court said of the Securities and Exchange Commission:

"Although the Commission's Rules provide that parties to adjudicative proceedings shall be given detailed notice of the matters to be determined, . . . and a right to cross-examine witnesses appearing at the hearing, . . . those provisions of the Rules are made specifically inapplicable to investigations, . . . even though the Commission is required to initiate civil or criminal proceedings if an investigation discloses violations of law. Undoubtedly, the reason for this distinction is to prevent the sterilization of investigations by burdening them with trial-like procedures." *Id.*, at 447-448. (Emphasis added.)

The statutory safeguards afforded persons being investigated by the Louisiana Commission are at least equal to those provided by most of these federal agencies. See *id.*, at 454-485.

The Commission's functions also find close analogies in the investigations and determinations that take place

daily in the offices of state and federal prosecuting attorneys. In both instances, the responsible officials proceed by interrogating persons with knowledge of possible violations of the criminal law. If the prosecutor believes that an individual has committed a crime, he files an information or seeks a grand jury indictment. When the Commission reaches a similar conclusion, it turns its intelligence over to a prosecutor so that he may initiate the formal criminal process.

For obvious reasons, it has not been seriously suggested that a "person under investigation" by a district attorney has any of the "adjudicative" constitutional rights at the investigative stage.<sup>4</sup> These rights attach only after formal proceedings have been initiated. Nor, of course, does one under investigation have a constitutional right that the investigations be conducted in secrecy, or that the official keep his plans to prosecute confidential. The decision whether or not to disclose these matters rests in the sound discretion of the responsible public official. Various factors, such as the fear that a suspect will flee or the concern for obtaining an unbiased jury when the matter comes to trial, may militate in favor of secrecy. On the other hand, an appropriate disclosure of a pending investigation may bring forth witnesses and evidence, and serves a proper ancillary function in keeping the public informed.<sup>5</sup>

<sup>4</sup> Of course, a person called upon to *participate* in the investigation, *e. g.*, by answering questions, may have relevant rights at this stage. Cf., *e. g.*, *Mancusi v. De Forte*, 392 U. S. 364 (1968). But appellant does not intimate, and the majority does not assume, that he has been or will be subpoenaed to testify or produce documents.

<sup>5</sup> It is ironic that appellant should complain of the open nature of the Commission's proceedings. The statutory requirement that the Commission "shall base its findings and reports only upon evidence and testimony given at public hearings," La. Rev. Stat. Ann. § 26:880.12 (A), is plainly designed to protect witnesses and persons under investigation from what some members of the Court

The Commission does differ from the operations of a prosecuting attorney in one important respect, however. The very formality of the Commission's investigatory process may lend greater credibility and a greater aura of official sanction to the testimony given before it and to its findings. Although in this respect the Commission is not different from the federal agencies discussed above, I am not ready to say that the collateral consequences of government-sanctioned opprobrium may not under some circumstances entitle a person to some right, consistent with the Commission's efficient performance of its investigatory duties, to have his public say in rebuttal. However, the Commission's procedures are far from being niggardly in this respect. They include not only the right to make a personal appearance, but the right to submit the statements of others, and, under some circumstances, to present questions to adverse witnesses. This is far more than is given persons under investigation by the federal agencies, and certainly serves adequately to neutralize any adverse collateral effects of the Commission's investigative proceedings.

As I noted above, the very insubstantiality of appellant's complaint leaves it unclear what the Court holds today. It may be that some of my Brethren understand the complaint to allege that in fact the Commission acts primarily as an agency of "exposure," rather than serving the ends required by the state statutes. If so—although I do not believe that the complaint can be reasonably thus construed—the area of disagreement between us may be small or nonexistent.

Before the Court holds that a purely investigatory agency must adopt the full roster of adjudicative safe-

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have criticized as secret inquisitions or Star Chamber proceedings. See *In re Groban*, 352 U. S. 330, 337 (1957) (MR. JUSTICE BLACK, dissenting); *Anonymous No. 6 v. Baker*, 380 U. S. 287, 298 (1959) (MR. JUSTICE BLACK, dissenting).

guards, however, it would do well to heed carefully its own warning in *Hannah*, that such a requirement "would make a shambles of the investigation and stifle the agency in its gathering of facts." 363 U. S., at 444. Such a requirement would not only incapacitate state criminal investigatory bodies at a time when their need cannot be gainsaid, but would cast a broad shadow of doubt over the propriety of long-standing procedures employed by many federal agencies—procedures which less than a decade ago the Court believed to be proper and necessary.